

1 UNITED STATES DISTRICT COURT

2 WESTERN DISTRICT OF NEW YORK

3
 4 - - - - - X
 MOOG INC.,) 22-CV-187
 Plaintiff)
 5 vs.
 Buffalo, New York
 6 SKYRYSE, INC., et al) October 20, 2022
 Defendant. 3:00 p.m.
 7 - - - - - X

ORAL ARGUMENT

8 **Proceeding held via Zoom for Government Platform**
 9 **All parties appeared remotely.**

10 TRANSCRIPT OF PROCEEDINGS
 BEFORE THE HONORABLE JEREMIAH J. MCCARTHY
 11 UNITED STATES MAGISTRATE JUDGE

12 FOR PLAINTIFF: SHEPPHARD MULLIN RICHETER & HAMPTON, LLP
 BY: RENA ANDOH, ESQ.
 13 LAI YIP, ESQ.
 KAZIM A. NAQVI, ESQ.
 14 -and-
 HODGSON RUSS, LLP
 15 BY: ROBERT J. FLUSKEY, JR, ESQ.
 PAULINE MUTO, ESQ.

16 FOR DEFENDANT: LATHAM & WATKINS, LLP
 17 BY: GABRIEL S. GROSS, ESQ.
 RYAN T. BANKS, ESQ.
 18 ARMAN ZAHOORY, ESQ.

19 FOR DEFENDANT
 20 PILKINGTON/KIM: WINGET, SPADAFORA & SCHWARTZBERG, LLP
 BY: ALEXANDER ASHER TRUITT, ESQ.
 21 ANTHONY D. GREEN, ESQ.

22
 23
 24
 25 **COURT REPORTER: Karen J. Clark, Official Court Reporter**
Karenclark1013@AOL.com

1 MOOG, INC VS. SKYRYSE, INC, ET AL

2 P R O C E E D I N G

3 * * *

4
5 MAGISTRATE JUDGE MCCARTHY: Good afternoon,
17:39:05 6 everyone. I see we have a lighter crowd than usual.

17:39:09 7 People losing interest or what? Okay.

17:39:13 8 Eric, you want to call the case and take
17:39:15 9 attendance.

17:39:16 10 THE CLERK: Yes, Judge. We're on the record
17:39:18 11 in civil proceeding 22-CV-187. Moog Inc. V Skyryse
17:39:26 12 Inc., et al., for oral argument.

17:39:28 13 Present by video are Rena Andoh, Kazim
17:39:34 14 Noqvi, Lai Yip, Pauline Muto and Robert Fluskey for
17:39:37 15 Plaintiff; Gabriel Gross, Ryan Banks, Arman Zahoory and
17:39:45 16 Terrance Flynn for Defendant Skyryse; Alexander Truitt
17:39:48 17 and Anthony Green for the individual Defendants.

17:39:51 18 The Honorable Jeremiah J. McCarthy
17:39:55 19 presiding.

17:39:56 20 MAGISTRATE JUDGE MCCARTHY: Good afternoon,
17:39:57 21 everyone. It's good to see you. It's been too long.
17:40:01 22 In any event, as you know, today we have on the docket
17:40:07 23 Moog's motions. Its motion to compel discovery
17:40:12 24 necessary for further trade secret identification, that
17:40:16 25 is docket No. 210; and its motion to enter a source code

1 MOOG, INC VS. SKYRYSE, INC, ET AL

17:40:20 2 protocol, which is docket number 213. And I recognize
17:40:24 3 that there are other motions outstanding, but these are
17:40:27 4 the two that we will be addressing today.

17:40:33 5 And, I thank you, Rena Andoh, I go your
17:42:23 6 letter yesterday, which really made my day, in terms of
17:42:25 7 narrowing some of the issues on motion 210. I also
17:42:29 8 received Gabe Gross' e-mail of yesterday as well.

17:42:37 9 Is Gabe with us?

17:42:38 10 Oh, yeah, there he is.

17:42:42 11 MR. GROSS: Hello, your Honor, I am.

17:42:44 12 MAGISTRATE JUDGE MCCARTHY: I see you now.

17:42:45 13 Let's just begin -- well, let me say a
17:42:48 14 couple of things preliminarily. You know, Judge
17:42:57 15 Vilardo, as you know, has ruled on the privilege issue.
17:43:00 16 He is commencing a jury trial. Is it next week?
17:43:07 17 Tomorrow. He is commencing a jury trial tomorrow on a
17:43:11 18 drug case that may last a while. I don't know, I have
17:43:17 19 not spoken to him recently about this case, and I don't
17:43:20 20 know what his time table is for deciding the
17:43:27 21 jurisdictional and venue motions.

17:43:30 22 As you know, I've decided that, from my
17:43:35 23 standpoint, the case should remain in this court, at
17:43:39 24 least through the conclusion of the preliminary
17:43:42 25 injunction hearing. I understand that's been objected

MOOG, INC VS. SKYRYSE, INC, ET AL

17:43:47 2 to, but, so as far as I'm concerned, it's staying here.
17:43:52 3 If it turns out that he takes a different view, I still
17:43:56 4 think what we're still doing today and will be doing in
17:43:59 5 deciding the other motions will not be a wasted effort,
17:44:03 6 even if the case goes to California. But, my overall
17:44:08 7 view, and, in particular, because we've -- we've had
17:44:14 8 these motions on hold for a while, is that I -- I want
17:44:19 9 to really move toward the identification stage, the
17:44:30 10 identification of trade secrets at issue in this case.
17:44:35 11 Not every one of Moog's trade secrets under the sun, but
17:44:39 12 only what is going to be at issue for purposes of the
17:44:42 13 preliminary injunction motion. You know, I made my
17:44:45 14 ruling back in July on that issue, I think it's docket
17:44:49 15 205. Nobody has objected to that. So, you know, as far
17:44:57 16 as I'm concerned, I understand the Defendant's position
17:45:00 17 that they want Moog to identify its trade secrets, but
17:45:04 18 my ruling has been and continues to be, that before it's
17:45:07 19 required to do so, it needs the discovery necessary from
17:45:12 20 Defendants necessary to enable it to do so.

17:45:15 21 So, with that in mind, that is the way we're
17:45:18 22 going to proceed. So, why don't we just, unless anybody
17:45:23 23 has a suggestion to the contrary, I would like to just
17:45:27 24 dive into motion 210, the motion to compel, and, in
17:45:34 25 particular, the three areas of dispute, which were

1 MOOG, INC VS. SKYRYSE, INC, ET AL

17:45:37 2 identified in Rena Andoh's letter of yesterday.

17:45:43 3 Rena, are you going to be arguing for Moog
17:45:46 4 or who is going to be arguing?

17:45:47 5 MS. ANDOH: Your Honor, as much as I know
17:45:49 6 you miss my voice, I will not be arguing this motion.
17:45:52 7 I'll be turning it over to my colleague, Mr. Naqvi, to
17:45:56 8 argue.

17:45:56 9 MAGISTRATE JUDGE MCCARTHY: Okay. And I'm
17:45:57 10 crushed, but I will try to deal with it. All right.

17:46:03 11 Kazim, you have the floor. And, yes, so
17:46:06 12 let's just focus on the item number one of that letter,
17:46:10 13 the laptops, the nine laptops, et cetera.

17:46:19 14 MR. NAQVI: Thank you, your Honor. I think
17:46:21 15 it's first important to note that the nine laptops and
17:46:24 16 the USB device that are at issue, these were first
17:46:27 17 addressed by Skyryse, and raised by Skyryse, in its own
17:46:32 18 May 4 letter. This is not something Moog pulled out of
17:46:39 19 thin air. And Moog wouldn't even know about these
17:46:42 20 devices if it wasn't for the statements in Skyryse's May
17:46:50 21 4th letter. And the May 4th letter describes how, in
17:46:52 22 connection with Skyryse's own investigation into the
17:46:55 23 possession and transfer of Moog data, Skyryse discovered
17:46:59 24 "It appears that Moog information may have been accessed
17:47:46 25 on Skyryse-issued laptops via personal USB devices held

1 MOOG, INC VS. SKYRYSE, INC, ET AL

17:47:52 2 by Robert Pilkington or Misook Kim." And the letter
17:48:35 3 then lists on a table on page seven a number of Skyryse
17:49:08 4 computers that had been connected to the very USB
17:49:11 5 devices belonging to the individual Defendants that
17:49:14 6 Skyryse have identified in that same letter.

17:51:12 7 So, you know, as your Honor noted earlier,
17:51:14 8 the Court's trade secret identification order states
17:51:17 9 that, before making its identification, Moog must first
17:51:21 10 examine the information, which was admittedly taken by
17:51:24 11 its former employees Kim and Pilkington prior to their
17:51:28 12 departure. So, the Skyryse computers that were
17:51:31 13 connected to Kim and Pilkington's USB devices are
17:51:35 14 relevant to the possession, the transfer or the use of
17:51:38 15 Moog data. And Moog needs to investigate these
17:51:41 16 computers or images of these computers to understand
17:51:44 17 what files were transmitted, altered and/or used by
17:51:47 18 Skyryse employees. We know that Kim and Pilkington used
17:51:52 19 various USB devices to copy and delete Moog data. And
17:51:57 20 these Skyryse computers are relevant to Moog's
17:51:59 21 identification process for its trade secrets.

17:52:02 22 So, in response to our motion, as it has
17:52:05 23 done previously, Skyryse did produce certain information
17:52:09 24 after refusing to do so for several weeks, but, and, as
17:52:12 25 noted in our letter, there still remain outstanding

MOOG, INC VS. SKYRYSE, INC, ET AL

issues. There is the nine laptops and there is the USB device that is number 55D28D65.

Let me first address the nine laptops.

First, I think it's important to note there is no additional burden involved in this request. Skyryse, admittedly, has already imaged the nine laptops. All it needs to do is send the images to iDS. So, there is no additional burden that we're imposing on Skyryse, because the process is already in place. Now, Skyryse may complain about the burdens involved with the privilege review. But, the burdens involved with the privilege review should not be a basis to hold up lawful and relevant discovery. A privilege review can be done by running select search terms for certain lawyers or legal terms. Skyryse does not need to review every single document. And, as your Honor can well appreciate, there have been large voluminous volumes of privilege review on both sides of this case. So, I don't think that can be a basis to hold up discovery.

In response to our motion, Skyryse did agree to produce a connection and file listing for two of the nine laptops. But, that is insufficient. First of all, this information should have been provided for the other seven laptops at minimum. But, the notion that Moog is

MOOG, INC VS. SKYRYSE, INC, ET AL

only entitled to file listings or connection histories, but not the devices themselves, is improper. And we've heard this argument before. We heard this same argument in connection with Skyryse's motion to compel the trade secret identification. They claim that because Moog had the file names for the almost 137,000 files that Ms. Kim copied, Moog doesn't need to access the devices themselves. But, as your Honor noted, Moog does have good cause to first inspect the devices because we need to understand exactly what was taken, what may have been altered in those files, who it was sent to, and especially in this case where there has been admitted deletion of files, the only way we can truly investigate what happened is to do a forensic analysis. Simply getting the file names is insufficient. Same thing applies here. We must get file names as to each of these nine laptops. We must understand what Moog data was transferred to those laptops, how it was used and how it was altered. So, that is the nine laptops.

And then there is the lone USB device, 55D28D65. Skyryse said in its opposition it doesn't need to provide this device because it was apparently only used by Skyryse's IT department to set up computers at Skyryse. Even though its May 4th letter suggests the

MOOG, INC VS. SKYRYSE, INC, ET AL

17:59:19 2 opposite, and this was a USB device used by the
17:59:22 3 individual Defendants. But critically nowhere does
17:59:25 4 Skyryse ever represent that the device does not contain
17:59:31 5 Moog data. And if there are no relevant files on the
18:00:42 6 device, which seems unlikely, given the statements they
18:00:46 7 made in the May 4 letter, then there is really no
18:00:50 8 prejudice to Skyryse. But, Skyryse, notably, has been
18:00:55 9 silent as to the actual contents on the device. And six
18:00:57 10 of the nine laptops in the May 4th letter were connected
18:01:01 11 to the device. So, again, these laptops and devices,
18:01:04 12 they have been placed at issue by Skyryse in connection
18:01:07 13 with its investigation of Moog data. These are not
18:01:10 14 devices that have been placed at issue by Moog. And,
18:01:14 15 so, Moog has met its burden that these devices are
18:01:17 16 relevant to the claims and defenses in the case. And
18:01:20 17 more specifically, directly relevant to Moog's trade
18:01:25 18 secret identification obligation. If these devices were
18:01:27 19 not relevant, they would not have been discussed at
18:01:30 20 length by Skyryse in its own letter. So, your Honor,
18:01:33 21 what we're requesting is that Skyryse transmit images of
18:03:21 22 the nine laptops at issue over to iDS, again, the images
18:03:25 23 have already been prepared, and that Skyryse, also,
18:03:31 24 transmit an image of the USB device, 55D28D65, or the
18:03:38 25 actual USB device itself over to iDS. They can conduct

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:03:44 2 a privilege review before the contents are made
18:03:47 3 available to Moog itself, and then we can do our
18:03:51 4 forensic analysis as we've done with all of the other
18:03:54 5 devices in the case.

18:03:55 6 MAGISTRATE JUDGE MCCARTHY: Okay. Thank
18:03:57 7 you.

18:03:59 8 Gabe, are you arguing in opposition or who
18:04:02 9 is going to argue?

18:04:02 10 MR. GROSS: I will, your Honor. Thank you.
18:04:04 11 I do have my colleagues, Mr. Zahoory and Mr. Banks with
18:04:09 12 me today because they have dug very deep into some of
18:04:13 13 these issues, which are factually complex. So I may
18:04:17 14 defer to them, but I'll handle the bulk of the
18:04:20 15 opposition.

18:04:21 16 And this is an issue that I'm happy to
18:04:23 17 explain, because I think the way it's been presented by
18:04:25 18 the Plaintiff is overly simplified, and, frankly,
18:04:29 19 inaccurate. And I would like to walk the Court through
18:04:34 20 it in some detail.

18:05:22 21 Your Honor, I'll take my guidance from you.
18:05:25 22 There are some intricate facts at issue. I did prepare
18:05:29 23 a few visuals that I'm happy to share a screen and show
18:05:32 24 and lodge with the Court, if you would like, as a record
18:05:35 25 of the hearing. I'm happy to proceed with or without

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:05:37 2 them. I think they may be useful, but I'll take my
18:05:41 3 guidance from you.

18:05:41 4 MAGISTRATE JUDGE MCCARTHY: Well, yeah, if
18:05:44 5 you want to put them up, we can -- how are we going to
18:05:48 6 make them part of the record then, I guess, is my
18:05:51 7 question?

18:05:52 8 MR. GROSS: I'm happy to e-mail them to
18:05:55 9 everybody, and I can file them with the Court after the
18:05:57 10 hearing, if you would like.

18:05:58 11 MAGISTRATE JUDGE MCCARTHY: Has Moog seen
18:06:00 12 these before now?

18:06:01 13 MR. GROSS: No, I just prepared these
18:06:02 14 getting ready last night and today. No one has had a
18:06:06 15 chance to see them.

18:06:06 16 MAGISTRATE JUDGE MCCARTHY: I assume you're
18:06:07 17 basing them on matters that are already in the record,
18:06:11 18 correct?

18:06:11 19 MR. GROSS: Just about everything. I have a
18:06:13 20 couple of facts in the deck that I'm looking at that are
18:06:16 21 not in the briefing, and I can proceed however you would
18:06:23 22 like.

18:06:23 23 MS. ANDOH: Your Honor, I have a little bit
18:06:25 24 of concern about this because we've never seen anything
18:06:27 25 that he is about to put up on the screen, and it's

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:06:30 2 difficult for us to review it in real time and figure
18:06:33 3 out if what's there is consistent with our understanding
18:06:36 4 of the record and what has actually been disclosed.
18:06:39 5 Obviously, it's your Honor's decision with respect to
18:06:41 6 that. I certainly suggest that if he is going to be
18:06:46 7 allowed to do it, that we be given a period after the
18:06:49 8 hearing to lodge any complaints or issues with we have
18:06:54 9 with the demonstratives.

18:06:57 10 MR. GROSS: Your Honor, I can make it easy,
18:06:59 11 I can only show the slides with things that are in the
18:07:02 12 record already, and there is a couple that have other
18:07:06 13 things, and I'm happy to keep them off the screen if
18:07:09 14 that will moot Ms. Andoh's concern.

18:07:12 15 MAGISTRATE JUDGE MCCARTHY: Let's do it this
18:07:14 16 way. If those slides which are not totally based on the
18:07:17 17 record are really helpful and are not going to be
18:07:20 18 objected to, then good for you. And it may be helpful,
18:07:24 19 so I'm not going to decide whether they will be part of
18:07:27 20 the record. And if I do allow them as a basis for my
18:07:32 21 consideration, then, if Moog requests, I'll give it an
18:07:36 22 opportunity to respond to that. But, let me just say in
18:07:39 23 general, folks, that, obviously, we got to move this
18:07:46 24 case forward. There have been some delays here and
18:07:50 25 there are due to disputes, which are nobody's fault, but

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:07:53 2 it does take some time, and I want to move things as
18:07:58 3 quickly as I can. So, I'm not going to be giving you a
18:08:05 4 detailed written explanation of things, I will explain
18:08:09 5 my reasoning on the record, and we'll move on from
18:08:14 6 there.

18:08:14 7 But, so, with that Gabe, why don't you begin
18:08:18 8 your presentation and making use of whatever slides you
18:08:25 9 wish. And, as we go along, if Moog has a particular
18:08:28 10 issue with one slide, they can speak up or ask for more
18:08:33 11 time to address it, et cetera. Okay?

18:08:36 12 MR. GROSS: Okay. Thank you, your Honor.
18:08:37 13 I'll be judicious about it and stick to things that I
18:08:41 14 don't think are very controversial and mostly relate to
18:08:44 15 the record in this case.

18:08:45 16 MAGISTRATE JUDGE MCCARTHY: Okay.

18:08:45 17 MR. GROSS: One thing that I think would be
18:08:47 18 helpful to do to start this discussion is talk about the
18:08:51 19 data and information that is at issue into discovery in
18:08:55 20 this case, because we are going to get into a discussion
18:09:00 21 of proportionality and of burden, and that has to do
18:09:05 22 with the volume of information that is at issue in the
18:09:08 23 discovery and the discovery that has been requested. So
18:09:10 24 just in terms of vocabulary, I would like to just step
18:09:13 25 back and talk about the amount of data we're talking

MOOG, INC VS. SKYRYSE, INC, ET AL

about. We're talking about not just gigabytes of data, but terabytes of data. And, for me, when I think about those volumes, it takes me back to when I used to do physical page turns of discovery information that would show up in my office in banker's boxes, each of which held about 2500 pages or 3000 pages in the box, and they would stack up in the corner for me. So, to put this in perspective, your Honor, we're talking about multiple terabytes of data, and I'll explain that as to how it applies to the actual discovery in this case. But, a single terabyte, a single terabyte of data, is roughly equivalent to 75 million pages of text if it were printed out. A gigabyte is 1,000th of that. A gigabyte is about 75,000 pages of text worth of data. That is what we're talking about. A single gigabyte would fill about 30 bankers boxes of paper. That would fill up a truck, your Honor. And a terabyte would be a 1,000 of those trucks. Just to put some perspective on the volumes we're going to be referring to.

I think it's also useful to think about and to be conscious of the discovery that is already available to Moog today, and has been for months through the processes that the parties have stipulated to and through the information that has been exchanged. Moog

MOOG, INC VS. SKYRYSE, INC, ET AL

18:10:43 2 already has, and this is just from Skyryse alone, this
18:10:46 3 is not from the individual Defendants, Moog has nearly
18:10:50 4 two terabytes of data available to it in discovery from
18:10:53 5 Skyryse right now. Using those rough equivalents to
18:10:57 6 pages, that is about 150 million pages worth of data
18:11:01 7 that is already available in discovery. And it's in
18:11:04 8 multiple forms. It came from four laptops that Skyryse
18:11:08 9 turned over to iDS in their entirety pursuant to the
18:11:12 10 stipulation; two USB storage devices in their entirety;
18:11:17 11 there are two source code repositories, excuse me, that
18:11:22 12 Skyryse provided to iDS because they had hit on some of
18:11:26 13 Moog's search terms. And out of an abundance of caution
18:11:30 14 because they might contain both sides' data, Skyryse
18:11:33 15 turned it over to iDS. There is many other hit son
18:11:37 16 search terms. And 50,000 thousand pages of discovery
18:11:40 17 that Skyryse collected because they were responsive to
18:11:43 18 discovery. And Skyryse has made other relevant source
18:12:07 19 for inspection for the last three months now, that we
18:12:07 20 made available for inspection and they chose not to look
18:12:12 21 at it. We asked that they provisionally begin some
18:12:17 22 security restrictions to begin their inspection in
18:12:20 23 earnest, which they claim they need all of that.
18:12:22 24 Together, your Honor, is already two terabytes of
18:12:26 25 information available to Moog today and has been for

MOOG, INC VS. SKYRYSE, INC, ET AL

months.

And today, we're going to talk about the nine laptops that Mr. Naqvi just addressed. The amount of data on those laptops, your Honor, is another nearly three and a half terabytes of data. That would be over 200 million pages worth of data. And if they are going to be turned over wholesale without a showing of relevance, without a showing of responsiveness, those will require Skyryse's legal team to review their contents for privilege, not quite as simple and quick as Mr. Naqvi made it sound, that it could be all automated. We're talking about attorney/client privilege review.

We'll turn to the volume shadow copies in another part of this hearing. That is another 112 gigabytes of data that Moog is demanding, your Honor. That would be roughly 8 million pages worth. Let's talk about Ms. Kim's and Mr. Pilkington's devices. Those alone, the five devices that we'll hear from their counsel about, those comprise another two terabytes of data, your Honor, another 150 million pages worth of data. So, I think, as we go forward, I know one of the questions the Court will be wrestling with is is there a showing of relevance for this vast amount of data. The vast majority of which can't possibly be relevant, even

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:14:25 2 if there are some relevant documents in them. What
18:14:30 3 about proportionality? What about the burden on the
18:14:33 4 Defendants and the benefits of the discovery on top of
18:14:47 5 the terabytes that the Plaintiff Moog here already has?

18:14:51 6 So, with that, your Honor, I'd like to talk
18:14:54 7 about these nine devices that Mr. Naqvi just addressed,
18:14:58 8 because that is a significant volume of data. That is
18:15:02 9 three and a half, almost three and half terabytes in and
18:15:06 10 of itself.

18:15:07 11 So, at this point, your Honor, if I may,
18:15:09 12 I'll try my hand at sharing the visual aid, and I would
18:15:12 13 like to address that May 4th letter. What I will put on
18:15:16 14 the screen is the excerpt that Mr. Naqvi just described.
18:15:20 15 So, this letter is one that Skyryse's prior counsel had
18:15:27 16 sent as its investigation was underway. Let me stop for
18:15:32 17 a second, your Honor, and ask if you can see my screen.

18:15:36 18 MAGISTRATE JUDGE MCCARTHY: Yes, I can see
18:15:37 19 it, and I also have the letter itself in front of me. I
18:15:40 20 think that was exhibit D to Rena Andoh's declaration.
18:15:45 21 So, yeah, I have it.

18:15:47 22 MR. GROSS: Correct ECF No. 210-7. So, i
18:15:51 23 think we're all looking at the same thing. This is
18:15:54 24 Gibson Dunn's letter as it was going through its
18:15:57 25 investigation urgently in May. And Mr. Naqvi described

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:16:01 2 this and characterized it in a way that I'm familiar
18:16:05 3 with because I've seen it in their briefing several
18:16:09 4 times. Things like, "Skyryse put it in issue and this
18:16:11 5 was Skyryse that implicated all of these devices." I
18:16:15 6 think he had the facts mistaken when he said that
18:16:19 7 everything shown in this letter shows devices that were
18:16:22 8 owned by Kim and Pilkington that were connected to
18:16:26 9 Skyryse devices, which is not the case. I think
18:16:29 10 throughout this letter, what you'll see is in the letter
18:16:31 11 is Skyryse's counsel was being very transparent with the
18:16:34 12 early stage investigation, basically updating Moog and
18:16:38 13 its counsel about what they were finding as the
18:16:40 14 investigation was underway and making it very clear.
18:16:43 15 You'll see it throughout the letter, look, we're
18:16:45 16 continuing to investigate the issues. This
18:16:47 17 investigation is ongoing. The answers we're giving you,
18:16:49 18 at this point, may be subject to change. This isn't
18:16:54 19 final. This isn't definitive. And I think Moog
18:16:58 20 information, I think this is part of the quote that Mr.
18:17:25 21 Naqvi mentioned, Moog information may have been accessed
18:17:30 22 primarily via personal USB devices held by the
18:17:35 23 Defendants, Mr. Pilkington and Ms. Kim. May have been
18:17:38 24 accessed by devices that those people had. And
18:17:44 25 Skyryse's investigation into the interactions between

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:18:19 2 its employees and some SanDisk Cruzer, that is a brand
18:18:23 3 name, SanDisk Cruzer, USB information is ongoing. So
18:18:28 4 while this investigation was underway, counsel provided
18:18:31 5 this list. What it did not do, and what Skyryse did not
18:18:35 6 do, and Skyryse's prior counsel did not do is make an
18:18:39 7 admission or draw a conclusion that everything in this
18:18:41 8 letter that reflected the current state of counsel's
18:18:44 9 investigation was tied to a device owned by Pilkington
18:18:48 10 or Kim that was involved in misappropriation. There are
18:18:52 11 no such admissions.

18:18:53 12 And, your Honor, the Court will see
18:18:56 13 throughout the briefing, what I respectfully submit are
18:19:00 14 a number of overstatements, even stronger than the terms
18:19:03 15 in which we heard Mr. Naqvi use today, say that these
18:19:07 16 are admittedly or necessarily implicated by
18:19:12 17 misappropriation, used by Ms. Kim and Pilkington and
18:19:17 18 misappropriation. That is not the case. This
18:19:19 19 particular chart that contains the nine devices that
18:19:21 20 Moog has moved to compel, does not, and did not in the
18:19:43 21 letter, get presented as an admission that every single
18:19:46 22 device in that chart was involved with Kim with
18:19:49 23 Pilkington and with any sort of alleged
18:19:52 24 misappropriation. And let me unpack that for the Court,
18:19:54 25 please, because I think it's important to look at this

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:19:56 2 specifically in detail.

18:19:57 3 This next slide is just simply an
18:19:59 4 enlargement of the chart that was in the May 4th letter.
18:20:03 5 And I added numbers on the left side. Those are the
18:20:06 6 nine devices that Moog enumerated in its motion about
18:20:10 7 the ones that they are compelling or moving to compel to
18:20:13 8 be produced in their entirety, nine entire computers,
18:20:17 9 your Honor.

18:20:17 10 MAGISTRATE JUDGE MCCARTHY: Excuse me. You
18:20:18 11 said something about a next slide, but I'm still seeing
18:20:21 12 the same slide. Have you switched slides?

18:20:25 13 MR. GROSS: Sure. The slide I would like to
18:20:28 14 direct the Court's attention has a number 6 on the
18:20:31 15 bottom right. And if that has not advanced, I will try
18:20:35 16 to restart it.

18:20:36 17 MAGISTRATE JUDGE MCCARTHY: Maybe if I click
18:20:38 18 on it, no, nothing happens.

18:20:40 19 MR. GROSS: All right. I'll stop and start
18:20:42 20 the share again and see if I can get this up to speed.
18:20:45 21 If not, I'll just continue without the visuals. But,
18:20:58 22 hopefully, I can bring us up to speed.

18:21:01 23 Thanks for your patience. Is there a slide
18:21:03 24 number 6, that says: "Moog's motion, nine laptops,"
18:21:06 25 available to you?

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:21:07 2 MAGISTRATE JUDGE MCCARTHY: Yes. Now, okay,
18:21:13 3 you have to all help me here because it's partially
18:21:19 4 blocked off by the videos of you folks to the right. Is
18:21:22 5 that what you're seeing?

18:21:24 6 MR. GROSS: That sounds like a personal
18:21:27 7 setting. I have you in the margins and can see.

18:21:33 8 MAGISTRATE JUDGE MCCARTHY: You're all on
18:21:34 9 the right-hand margin. I have four of you on the
18:21:37 10 right-hand margin, but you're overlapping with the
18:21:40 11 slide. So, I'm trying to figure out how to see the full
18:21:44 12 slide.

18:21:44 13 MS. ANDOH: Gabe, you have it in -- not in
18:21:47 14 slideshow mode. I would suggest that if you put it in
18:21:50 15 slideshow mode, it may actually blow it up so the Judge
18:21:54 16 can actually see it.

18:21:55 17 MAGISTRATE JUDGE MCCARTHY: As much as I
18:21:56 18 like seeing your faces, I recognize your voices, so if I
18:22:01 19 look at the slides right now, that would be helpful.

18:22:03 20 MR. GROSS: I appreciate that. And in, as a
18:22:05 21 matter of fact, I had it in slideshow mode but it is
18:22:10 22 obviously not working over the Zoom platform. I'll go
18:22:14 23 into the presentation mode now. Has that helped anyone?

18:22:18 24 MAGISTRATE JUDGE MCCARTHY: Nope. Let me
18:22:20 25 see. Nope. Is everybody else, oh.

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:22:26 2 MR. GROSS: Okay. Well, I think then I'm
18:22:28 3 probably going to need to cancel the demonstratives or
18:22:33 4 just actually, I can switch to a better format in one
18:22:36 5 moment.

18:22:36 6 MAGISTRATE JUDGE MCCARTHY: Well, okay.

18:22:37 7 MR. GROSS: But I can -- what I'll do in a
18:22:40 8 moment, your Honor, is I'll switch to a sharing a PDF of
18:22:44 9 the same slide, and I think that will simplify it, but
18:22:47 10 in the meantime, I can unpack this a little bit.

18:22:50 11 MAGISTRATE JUDGE MCCARTHY: All right.

18:22:51 12 MR. GROSS: Exhibit D, ECF 210-7 of Ms.
18:22:56 13 Andoh's letter.

18:22:59 14 MAGISTRATE JUDGE MCCARTHY: The May 4th
18:23:01 15 letter.

18:23:01 16 MR. GROSS: Page seven has the chart on it.
18:23:03 17 And what I did is I will enumerate the nine devices on
18:23:07 18 there, and then I can explain their could connections to
18:23:11 19 these various USB devices and what the subsequent
18:23:15 20 investigation that continued after the May 4th letter
18:23:18 21 revealed about it, and how we have, on behalf of
18:23:20 22 Skyryse, continued to share information about them,
18:23:23 23 which, frankly, moot the issue. And the information
18:23:26 24 that we've already turned over in discovery and shared
18:23:29 25 with Moog, shows that there is simply no basis, no

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:23:33 2 basis, to demand three and a half terabytes of that data
18:23:37 3 by turning over the entire contents of computers in
18:23:41 4 light of the significant information Moog has already
18:23:45 5 provided. So, all right. I just see my colleague help
18:23:52 6 me out here.

18:23:52 7 Is the slide available to you now, your
18:23:55 8 Honor?

18:23:55 9 MAGISTRATE JUDGE MCCARTHY: Yeah. I mean
18:23:56 10 it's, yeah, close enough. I think the only thing that
18:24:00 11 is blocked is the final column. Yeah. I see it because
18:24:05 12 I also have the hard copy in front of me. I see it.

18:24:08 13 MR. GROSS: All right. Well, let's
18:24:09 14 continue. So, you can see where we've enumerated the
18:24:13 15 different devices on the left. You see 1 through 9
18:24:16 16 running vertically down the page.

18:24:18 17 MAGISTRATE JUDGE MCCARTHY: Wait a second.
18:24:20 18 Wait. No. I'm sorry. I do see that now, 1 through 9,
18:24:34 19 I do see that now.

18:24:35 20 MR. GROSS: Thank the Court for your
18:24:36 21 patience.

18:24:37 22 MAGISTRATE JUDGE MCCARTHY: That's okay, but
18:24:38 23 you're going to be later sending these to everybody,
18:24:40 24 including me, right?

18:24:41 25 MR. GROSS: Absolutely.

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:24:42 2 MAGISTRATE JUDGE MCCARTHY: Okay, all right.

18:24:43 3 MR. GROSS: We'll be happy to do that.

18:24:45 4 MAGISTRATE JUDGE MCCARTHY: All right.

18:24:46 5 MR. GROSS: So, what we added to the letter
18:24:48 6 are those nine numbers.

18:24:49 7 MAGISTRATE JUDGE MCCARTHY: Right.

18:24:50 8 MR. GROSS: To show the devices that are at
18:24:52 9 issue. And a couple notes of clarification about the
18:24:55 10 column headings. The one called "host serial" that was
18:24:59 11 in the Gibson Dunn letter, that we understand is just a
18:25:04 12 reference to the serial numbers. And the far right
18:25:08 13 column, the abbreviation VSN.

18:25:11 14 MAGISTRATE JUDGE MCCARTHY: Right.

18:25:11 15 MR. GROSS: I don't know what the acronym
18:25:13 16 is, but I understand that to mean the serial numbers of
18:25:17 17 USB devices that may have been connected to the laptops
18:25:20 18 in the left column. That is what we're looking at here.

18:25:23 19 Let's go to the next slide, please.

18:25:29 20 Now, right off the bat, we can eliminate
18:25:32 21 some of the laptops on this slide. In particular,
18:25:35 22 number 9, because it's already been produced. That has
18:25:40 23 been produced and not at issue. Moog still asks for the
18:25:42 24 production of nine laptops. The one that is number 9
18:25:44 25 has been produced, that is no longer at issue. And

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:25:48 2 there are two more that are not the subject of Moog's
18:25:51 3 motion, but I wanted to make clear those drop off the
18:25:56 4 chart as well. There is no discovery dispute about
18:26:00 5 those. So, the list is getting smaller.

18:26:00 6 Let's go to the next slide, please.

18:26:01 7 And then there is five others, your Honor,
18:26:03 8 actually more, that I think we can also just do away
18:26:07 9 with. These are the ones that Mr. Naqvi mentioned as
18:26:11 10 having been connected to a particular USB device. And
18:26:15 11 if we use row number 2 as an example, you'll see that
18:26:20 12 laptop was connected to a device in the right hand
18:26:22 13 column begins 55D. Do you see that, your Honor? That
18:26:27 14 row number 2 refers to a laptop connected to a device
18:26:32 15 that began with 55D. And my colleague just highlighted
18:26:36 16 that.

18:26:37 17 MAGISTRATE JUDGE MCCARTHY: I'm sorry, where
18:26:38 18 are you highlighting? I'm having a little difficulty
18:26:41 19 seeing it.

18:26:42 20 MR. GROSS: It's in the right-hand column of
18:26:45 21 the row that is numbered 2.

18:26:47 22 MAGISTRATE JUDGE MCCARTHY: Last
18:26:47 23 disconnected. How far down are we?

18:26:50 24 MR. GROSS: The far right column, that is
18:26:52 25 headed "VSN," the header is VSN in the column.

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:26:56 2 MAGISTRATE JUDGE MCCARTHY: Yes.

18:26:57 3 MR. GROSS: All right. VSN.

18:27:00 4 MAGISTRATE JUDGE MCCARTHY: Just a second.

18:27:01 5 Just, yeah, see that is my problem. Now my courtroom

18:27:06 6 deputy is here, and see the videos are blocking. Okay.

18:27:19 7 Guess what, folks. Can you still hear me?

18:27:22 8 MR. GROSS: Sure can.

18:27:23 9 MAGISTRATE JUDGE MCCARTHY: I have

18:27:24 10 eliminated your faces. I don't know --

18:27:27 11 MR. GROSS: No offense taken.

18:27:28 12 MAGISTRATE JUDGE MCCARTHY: At some point, I

18:27:30 13 assume I'll be able to get them back, but now I'm able

18:27:33 14 to see the entire. How do I get their faces?

18:27:36 15 THE CLERK: When he stops screen sharing,

18:27:38 16 they'll come back.

18:27:39 17 MAGISTRATE JUDGE MCCARTHY: All right. So

18:27:41 18 when you stop screen sharing, your faces will come back.

18:27:45 19 See, you are not dealing with a technological Einstein.

18:27:49 20 I think that is becoming more and more apparent to you.

18:27:53 21 Anyway, I can see the document now, and I see it in its

18:28:02 22 entirety.

18:28:02 23 MR. GROSS: Okay. So, your Honor, what this

18:28:05 24 part of the presentation is designed to show is that

18:28:08 25 that particular device that begins with 55D, it's

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:28:12 2 55D28D65.

18:28:17 3 MAGISTRATE JUDGE MCCARTHY: I see it.

18:28:18 4 MR. GROSS: That was a USB device that
18:28:20 5 Gibson Dunn had identified as having been connected to
18:28:24 6 some laptops, and disclosed that to Moog and its
18:28:27 7 counsel. And we continued the investigation, and here
18:28:29 8 is what we learned about it. This is not a device owned
18:28:34 9 by Ms. Kim. It's not a device owned by Mr. Pilkington.
18:28:38 10 This is a device that Skyryse's IT department used. And
18:28:42 11 one of the things they used it for was to set up laptops
18:28:48 12 for employees at the company. And you see it on the
18:28:53 13 side, the laptop numbered two, numbered 3, 4, 5, 6, 7
18:28:58 14 and 8. And that make the sense. We interviewed the IT
18:29:03 15 personnel who are in charge of setting up laptops. We
18:29:08 16 looked at this USB drive and determined, one, the vast
18:29:12 17 majority of the data is from '18 and '19, and years
18:29:39 18 prior to when Pilkington and Kim even joined the
18:29:42 19 company, and everything that post dated that date, had
18:29:45 20 nothing to do with Moog. So, Mr. Naqvi made it sound as
18:29:50 21 though Skyryse will refuse to confirm that this device
18:29:55 22 has nothing to do with Moog. Your Honor, as an Officer
18:29:58 23 of the Court, we've said in our briefing, and I'll say
18:30:00 24 it here again, this device had nothing to do with Moog.
18:30:04 25 It was the IT department's device used to set up

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:30:08 2 laptops.

18:30:08 3 So, Gibson Dunn transparently showed this
18:30:14 4 among the list of USB devices connected to certain
18:30:20 5 employee's laptops. This is not an admission that this
18:30:23 6 had anything to do with Moog or that it was Pilkington
18:30:26 7 or Kim's. So there is no basis for this discovery, your
18:30:29 8 Honor, because it's simply not relevant.

18:30:31 9 And I heard Mr. Naqvi say something today
18:30:35 10 and say in the brief, hey, if it's irrelevant, there is
18:31:17 11 no burden on Skyryse to just turning over these laptops.
18:31:20 12 That is not how discovery works, your Honor. The
18:31:22 13 relevance burden in discovery is low, admittedly, but
18:31:26 14 you still need to have a basis for relevance. And there
18:31:30 15 is prejudice. There is burden. If Skyryse were ordered
18:31:33 16 to turn over three and a half terabytes in
18:31:38 17 indiscriminantly of data on laptops in discovery when
18:31:42 18 there is no showing of relevance whatsoever, much less
18:31:46 19 that outweighs the burden or any elements of
18:31:49 20 proportionality, those are the facts about the USB
18:31:55 21 55D28D65, it was connected to a number of laptops as
18:31:58 22 Gibson Dunn showed. The investigation revealed it has
18:32:02 23 nothing to do with Moog. There is no grounds for
18:32:04 24 discovery of laptops or that device simply because that
18:32:08 25 device was connected to a number of laptops. So, that

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:32:11 2 is what I wanted to say about the USB device, and that
18:32:14 3 particular USB device, and its connections.

18:32:17 4 So that leaves us with the remaining devices
18:32:20 5 we see on the slide. Let's go to the next one, please.
18:32:24 6 Next one, please.

18:32:33 7 MR. ZAHOORY: I put it to the next one, is
18:32:35 8 it not showing?

18:32:36 9 MR. GROSS: Let's go to the next one.

18:32:48 10 MR. ZAHOORY: Can you guys see it?

18:32:50 11 MR. GROSS: This may be a bill, Arman. What
18:32:52 12 is on slide 10?

18:32:59 13 Okay. Thank you. All right. Now, bear
18:33:02 14 with me, your Honor. If I'd been able to build the
18:33:06 15 slide one piece at a time, this wouldn't be so
18:33:09 16 overwhelming. I'll walk the Court through it. On the
18:33:13 17 right hand of the slide, we put red boxes around the
18:33:18 18 three devices that are at issue, now that we've gotten
18:33:21 19 rid of the IT drive and the ones that were already
18:33:23 20 produced. There are three remaining laptops that are at
18:33:27 21 issue. The one that begins with a serial number FM1,
18:33:31 22 one that begins with a serial number starting J54, and
18:33:35 23 one that begins with a serial number C1D.

18:33:39 24 Your Honor, are you able to see those three
18:33:41 25 red boxes?

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:33:42 2 MAGISTRATE JUDGE MCCARTHY: Yes, I do.

18:33:43 3 MR. GROSS: Now, we also filled in some
18:33:45 4 blanks that had been in Gibson Dunn's letter because the
18:33:48 5 investigation continued. At the point where Gibson left
18:33:51 6 off with its investigation and knew that the FM1 laptop
18:33:55 7 had been connected to three drives, but it didn't know
18:33:58 8 which ones, and so we filled in the blanks because we
18:34:01 9 continued the investigation with Skyryse and we learned
18:34:04 10 what they are. So, Moog has been asking for one USB
18:34:08 11 device, that is in the red text below the chart, that is
18:34:12 12 the one we just discussed, that is the IT department's
18:34:14 13 device, that is just irrelevant. There is no reason the
18:34:18 14 Court should order Skyryse to produce that USB drive
18:34:22 15 which has nothing to do with Moog or this lawsuit.

18:34:24 16 There are three others that still remain on
18:34:26 17 this chart, and there is no grounds to compel production
18:34:30 18 of these, either. The one that begins in EC979, which
18:34:35 19 shows up in two places on this chart. Arman just
18:34:39 20 highlighted one and the other connected to two different
18:34:42 21 laptops that has been produced. So, there is no dispute
18:34:45 22 about Moog having access to the contents of that laptop.
18:34:49 23 The second one is the one that begins with the number
18:34:54 24 80, 80FC319F, that was connected to two other laptops,
18:34:59 25 and Defendant Kim already produced that, made it

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:35:03 2 available in discovery. And beyond that, Skyryse has
18:35:07 3 been, in my view, very reasonable. Skyryse said, look,
18:35:09 4 if you're interested in how that device that Ms. Kim
18:35:13 5 produced may have interacted with Skyryse machines, here
18:35:16 6 are the connection histories. It's a log, if you will,
18:35:19 7 your Honor, the computers keep that shows when and how
18:35:24 8 other devices have been connected to them. So, we
18:35:27 9 provided the connection history that Moog is free to
18:35:30 10 explore in discovery. But there has been no showing of
18:35:34 11 any sort that the entire laptops to which that device
18:35:37 12 was connected with their millions of files on them,
18:35:42 13 should be produced in discovery. If Moog would like to
18:35:45 14 meet and confer with us and talk about what they see on
18:35:48 15 the connection history and follow up with anything
18:35:50 16 targeted, we'll always be willing to consider that and
18:35:53 17 meet and confer with them. What they are asking the
18:35:56 18 Court to do is order more wholesale productions of
18:35:59 19 entire devices with millions of files on them, the vast
18:36:03 20 majority of which are just irrelevant.

18:36:05 21 And now the last device, the USB device,
18:36:08 22 that remains at issue here is one that is called
18:36:12 23 SanDisk, and again that is the brand name, as we've told
18:36:16 24 Moog and we have known for some time, that is not
18:36:19 25 Skyryse's. That belongs to an individual employee.

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:36:21 2 It's been the subject of third-party discovery, and that
18:36:24 3 is underway. Skyryse is not in a position to produce
18:36:27 4 that, and I understand that those -- that this employee
18:36:30 5 is represented by his own counsel and I understand those
18:36:32 6 negotiations are underway.

18:36:34 7 MAGISTRATE JUDGE MCCARTHY: So that -- that
18:36:35 8 employee is -- you're referring to someone -- well, it's
18:36:41 9 a current employee.

18:36:42 10 MR. GROSS: Current employee, not --

18:36:44 11 MAGISTRATE JUDGE MCCARTHY: Not the
18:36:45 12 individual Defendants.

18:36:45 13 MR. GROSS: Correct. It's an individual
18:36:47 14 employee who, and its his personal property, and so Moog
18:36:52 15 has taken steps to seek third-party discovery from him
18:36:56 16 and many others.

18:36:56 17 MAGISTRATE JUDGE MCCARTHY: Okay.

18:36:57 18 MR. GROSS: So, your Honor, I think this
18:37:00 19 brings me just about to a close on the nine laptops and
18:37:03 20 one USB device issue. Keep in mind what they are asking
18:37:07 21 for. They are asking for wholesale production of
18:37:09 22 devices, each of which contains millions of files on it
18:37:13 23 with no showing of relevance, of the benefit of it, of
18:37:17 24 the burden, just speculation that they need to go in and
18:37:20 25 find out what happened. And, your Honor, I know it's a

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:37:24 2 cliché, but I know I'm going to need to use it more than
18:37:26 3 once in today's hearing. This is a classic fishing
18:37:29 4 expedition. There is no reason the Court should order
18:37:32 5 Skyryse to turn over three and a half terabytes of data,
18:37:36 6 the hundreds of millions of pages worth of data that
18:37:38 7 would contain, especially at this stage in a case when
18:37:43 8 Moog already knows what it's own trade secrets are, is
18:37:46 9 sitting on a mountain of data that Skyryse has already
18:37:49 10 provided, and has its own mountain of data identifying
18:37:53 11 with granularity exactly which files it claims the
18:37:57 12 individual Defendants took to Skyryse. There is just no
18:38:01 13 showing for this discovery.

18:38:02 14 So you ordered, your Honor, that Moog should
18:38:05 15 file a motion to compel what discovery is necessary for
18:38:09 16 it to identify its own trade secrets. These nine
18:38:14 17 laptops and this one USB device are not necessary for it
18:38:17 18 to do that.

18:38:18 19 MAGISTRATE JUDGE MCCARTHY: All right. Let
18:38:20 20 me, before I turn back to -- have you concluded your
18:38:24 21 presentation on this issue?

18:38:25 22 MR. GROSS: On the nine laptops, I think
18:38:27 23 I've said what I needed to say, your Honor.

18:38:30 24 MAGISTRATE JUDGE MCCARTHY: Before I turn
18:38:31 25 back to Mr. Naqvi, let me ask you, Mr. Gross, aside from

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:38:39 2 relevance, and I understand your position on that, but
18:38:42 3 in terms of burden to you, I understand the production
18:38:48 4 would all be, you know, by computer and so forth, so the
18:38:52 5 production itself, I don't think would be burdensome.
18:38:56 6 Do I understand correctly that what you are saying would
18:38:59 7 be burdensome, if I get past relevance, would be your
18:39:04 8 need to conduct a privilege review of all of those
18:39:09 9 devices?

18:39:10 10 MR. GROSS: I think that is a significant
18:39:13 11 part of the burden, your Honor, but not the only part.

18:39:17 12 MAGISTRATE JUDGE MCCARTHY: What is the
18:39:18 13 other part?

18:39:18 14 MR. GROSS: Well, the fact that these are
18:39:20 15 available digitally and by computer does not eliminate
18:39:24 16 the burden. And I'll give you an example, because of
18:39:27 17 the expense and the time that it takes to process these
18:39:30 18 sorts of volumes of data. We have, as I think you know,
18:39:34 19 we've been working with the individual Defendants to
18:39:37 20 gain access to five of their devices. And if memory
18:39:41 21 serves, the combined total volume of data on those
18:39:45 22 devices is about two terabytes of data, which Skyryse
18:39:49 23 needs to review for privilege. The laptops contain much
18:39:52 24 more, about three and a half terabytes of data. And I
18:39:57 25 mention this to show you by way of comparison, that just

MOOG, INC VS. SKYRYSE, INC, ET AL

18:40:00 2 to pay a vendor to upload to produce to the Defendants,
18:40:06 3 it's taken a week just to upload those files. And we're
18:40:10 4 talking about a much more significant volume. And once
18:40:13 5 uploaded, they need to be processed for review. They
18:40:16 6 need to be accessible on a review platform, so you can
18:40:20 7 look for privilege issues. And that takes a significant
18:40:22 8 amount of time and significant amount of expense. And I
18:40:25 9 think, frankly, that pales in comparison to the number
18:40:27 10 of attorney hours it will take to do the privilege
18:40:30 11 review. But I don't want to suggest that just because
18:40:32 12 the sufficient stuff is digital, there is no burden of
18:40:37 13 turning them over. Yes, we imagined them, and that was
18:41:13 14 a significant and expensive process, it doesn't make it
18:41:16 15 immediately available for discovery. This comes at
18:41:19 16 great expense, takes a significant amount of time. And
18:41:21 17 then, your Honor, there is a rule of thumb that our
18:41:24 18 discovery vendors often use, which is attorneys
18:41:27 19 reviewing documents for privilege, if they are moving at
18:41:31 20 a good clip, can review about 50 documents an hour.
18:41:34 21 It's a very rough rule of thumb, documents have all
18:41:36 22 different shapes and sizes, but they can do about 50
18:41:40 23 documents an hour. We're talking about hundreds of
18:41:42 24 millions of documents. And while we'll use technology
18:41:45 25 to try to accelerate that process as best we can, it's a

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:41:48 2 significant undertaking if Skyryse were ordered to
18:41:55 3 produce this information when there has been no showing
19:18:16 4 that the vast majority of it is relevant.

19:18:19 5 MAGISTRATE JUDGE MCCARTHY: So, you're
19:18:19 6 saying not in our lifetimes, is that what you're telling
19:18:23 7 me?

19:18:23 8 MR. GROSS: Well, you know, I would hope,
19:18:25 9 your Honor, that technology would speed it along, but it
19:18:28 10 will take hundreds or thousands of hours at a minimum to
19:18:31 11 get through the review process, and that is using
19:18:33 12 technology.

19:18:34 13 MAGISTRATE JUDGE MCCARTHY: All right.
19:18:35 14 Okay. Thank you.

19:18:36 15 All right. Back to you, excuse me, Kazim.

19:18:42 16 MR. NAQVI: Thank you, your Honor. You
19:18:43 17 know, Mr. Gross said a lot of things. I'll try to keep
19:18:47 18 my reply short. The biggest glaring omission from Mr.
19:18:52 19 Gross' presentation is that you never heard him say that
19:18:55 20 the laptops we're seeking images to be produced of do
19:19:44 21 not contain Moog data. That is the biggest unanswered
19:19:47 22 question. He did not make any representation that the
19:19:49 23 laptops don't contain Moog data. He made a certain
19:19:53 24 representation about one of the USB devices, but not the
19:19:56 25 laptops themselves. And this case is much larger than

MOOG, INC VS. SKYRYSE, INC, ET AL

19:19:58 2 USB devices. Once Moog files are entered, they can be
19:20:04 3 altered, they can be deleted, they can be used, they can
19:20:11 4 be used as a reference. So laptops are very critical.
19:20:15 5 And you heard Mr. Gross talk significantly about burden
19:20:19 6 and the volume of discovery in this case. We need to be
19:20:22 7 very circumspect about what the root cause of the volume
19:20:25 8 of discovery of this case is. Moog should not be
19:20:29 9 penalized because the volume of trade secret theft in
19:20:33 10 this case is gargantuan. It's 1.4 million files. The
19:20:38 11 number of devices involved in the misappropriation and
19:20:40 12 turned over to iDS stipulated by the parties is well
19:20:44 13 over three dozen. So, you know, we heard Mr. Gross talk
19:20:48 14 about hard copy pages. And I think your Honor picked up
19:20:51 15 on it. Data and number of hard copy pages does not
19:20:54 16 matter if they are producing electronic images. They've
19:21:33 17 already imaged the devices. That process is done. It
19:21:36 18 was done months ago. And so there is no further need to
19:21:39 19 process them. IDS, which is the neutral forensic
19:21:43 20 vendor, you know, involved in this case, they will
19:21:46 21 facilitate making that image available for Moog's
19:21:50 22 review. And, you know, your Honor, Moog is paying 50
19:21:53 23 percent of iDS's bill. Skyryse is only paying 25
19:22:00 24 percent. So the notion that Skyryse is going to bear
19:22:04 25 all of the cost of this process is not true. They are

MOOG, INC VS. SKYRYSE, INC, ET AL

not required to search for documents, the laptops have been imagined. They are not required to print documents. They are not required to prepare bankers documents. They need to send the images to iDS. I understand they need to complete a privilege review. But, your Honor, given the size and scope of this case, and the volume of trade secrets that have been misappropriated, a privilege review cannot hold up lawful discovery. If that was the case, then there could be no discovery in this case. All parties have expended critical resources in conducting a privilege review. That is the nature and scope of the case given what is at stake here.

What I think you heard, I think, is important the change of tone. I think, I appreciate you made read the May 4th letter, and I think the May 4th letter, while it has some ambiguous language about our investigation is ongoing and things like that, the devices at issue were clearly implicated in the letter. We did not write that letter. So, the notion that this is a fishing expedition, I just think is unfair. This is Skyryse's letter. And now I understand that Skyryse's investigation has been ongoing, but there is a complete change of course here. And Moog needs to be

1 MOOG, INC VS. SKYRYSE, INC, ET AL

19:25:28 2 able to test that change of course. You know, we can't
19:25:32 3 take Skyryse's word at face value; there is nothing
19:25:35 4 here, nothing further to be done, no discovery to be
19:25:39 5 had. There has been a misappropriation of over 1.4
19:25:43 6 million files by Skyryse's former employees. And, so,
19:26:18 7 Moog should be entitled to test whether these laptops
19:26:21 8 contain any Moog data, which there has been no
19:26:25 9 representation that they don't. And what has happened
19:26:27 10 to these files, whether they have been altered or
19:26:30 11 whether they have been deleted or sent somewhere else.

19:26:32 12 And, lastly, we heard Mr. Gross talk about
19:26:35 13 Skyryse's IT department. I don't think it matters who
19:26:38 14 connected the devices. What matters is the content of
19:26:41 15 those devices and the content of those laptops. And we
19:26:45 16 still have not heard Mr. Gross or any certification that
19:26:48 17 all of the devices we are seeking production of do not
19:26:51 18 contain any Moog information. And the fact that that
19:26:54 19 answer, or that question remains unanswered, I think,
19:26:57 20 speaks for itself.

19:26:59 21 MR. GROSS: Your Honor, if I may briefly.

19:27:01 22 MAGISTRATE JUDGE MCCARTHY: Yeah, yes.

19:27:04 23 MR. GROSS: Moog's speculation is not a
19:27:06 24 basis for discovery. They have to show relevance. They
19:27:11 25 are saying, don't trust them, your Honor. They are not

MOOG, INC VS. SKYRYSE, INC, ET AL

19:27:14 2 coming to court with evidence of relevance that the IT
19:27:17 3 department somehow absconded with Moog's proprietary
19:27:21 4 information. Speculation simply is not a ground for
19:27:25 5 discovery. They've also, they are shifting their
19:27:28 6 theory. They came to the Court saying, look what's in
19:27:31 7 the Gibson Dunn May 4th letter, laptops connected to
19:27:35 8 certain device. Now, they are saying the investigation
19:27:38 9 is ongoing and we learned something about the USB
19:27:41 10 devices, but they are not telling you that the laptops
19:27:44 11 don't have Moog data on it. Your Honor, that is
19:27:47 12 speculation that they do. We have no reason to think
19:27:50 13 that the laptops are laden with Moog data. If they have
19:27:54 14 specific discovery that is based on fact, that would be
19:27:58 15 different, but we don't. Now, we keep hearing this
19:28:37 16 refrain that 1.4 million files have been taken. They
19:28:46 17 know the factual basis for their allegations of who took
19:28:49 18 what and when, they have the machines on which those
19:28:53 19 files were allegedly copied. That does not entitle them
19:28:56 20 to go into every computer, every drawer, every file
19:28:59 21 cabinet, every repository in Skyryse simply because they
19:29:04 22 have a factual basis to accuse wrong doing of certain
19:29:08 23 individuals. It would be like saying, my home was
19:29:12 24 burglarized and the burglar took a sack of goods into a
19:29:16 25 high rise downtown and now I'm entitled to, because the

1 MOOG, INC VS. SKYRYSE, INC, ET AL

19:29:19 2 burglar went in there, to go in every closet, every
19:29:23 3 drawer, every computer, every repository in that
19:29:26 4 building because it might be someplace where the burglar
19:29:30 5 put the ill-gotten goods. That is not how discovery
19:29:34 6 works. And, frankly, your Honor, when they are sitting
19:29:37 7 on two terabytes that they already adduced into
19:29:40 8 discovery without identifying their trade secrets, they
19:29:44 9 have more than enough.

19:29:46 10 MR. NAQVI: Your Honor, if I may briefly
19:29:48 11 reply. I'll be 30 seconds.

19:29:50 12 I think Mr. Gross' analogy about the burglar
19:29:53 13 and goods, it just doesn't apply here. We're dealing
19:29:56 14 with electronic files and items that are quickly
19:29:59 15 transferred between computers, so I don't think that
19:30:02 16 analogy works.

19:30:03 17 And I really just want to end the foundation
19:30:05 18 of this entire issue. These are devices that Skyryse
19:30:09 19 identified in its own letter. The notion that Moog is
19:30:12 20 trying to open every drawer, every computer, every file
19:30:15 21 at Skyryse is just not true. We do have good cause.
19:30:19 22 Skyryse provided the good cause as part of its
19:30:22 23 investigation into what happened to the files taken by
19:30:25 24 Mr. Pilkington and Ms. Kim. It all starts from the May
19:30:29 25 4th letter, which is from Skyryse's counsel, and,

1 MOOG, INC VS. SKYRYSE, INC, ET AL

19:30:32 2 unfortunately, Moog has not had visibility into what
19:30:35 3 happened to the files, where they were transferred once
19:30:38 4 they were taken. That is part of our investigation that
19:30:40 5 we are entitled to. And it's the same thing we heard
19:30:43 6 before, when, oh, Moog, has a file, that is all they
19:30:48 7 need. And as your Honor noted, that is not all we need.
19:30:51 8 We need to do a full forensic investigation, it's the
19:30:55 9 same issue occurring.

19:30:56 10 MAGISTRATE JUDGE MCCARTHY: You both -- I
19:30:59 11 don't mean this to kick the can down the road. You both
19:31:01 12 make very compelling points. I'm trying to explore
19:31:08 13 whether there is -- and, again, I want to just say, I
19:31:14 14 applaud everybody for what is reflected in Rena's letter
19:31:20 15 of yesterday, that there were a lot of other issues on
19:31:23 16 the table, and you've made good progress in resolving
19:31:26 17 them. So, what I'm trying to do now is just explore.
19:31:31 18 Is there a possibility of, by way of a middle ground, of
19:31:36 19 maybe doing some random sampling of these various
19:31:40 20 devices and seeing what you come up with and then
19:31:44 21 deciding whether further exploration is necessary? That
19:31:51 22 would minimize the -- I mean, I'm concerned about cost
19:31:55 23 and I'm concerned about time delay because we want to
19:31:58 24 move this forward. And if, for example, a privilege
19:32:00 25 review is going to take a long time, I don't know that

1 MOOG, INC VS. SKYRYSE, INC, ET AL

19:32:04 2 that is in anybody's interest. But, I mean, would it be
19:32:07 3 possible to, you know, take random samples of these
19:32:13 4 devices and see what you're hitting on. And if you're
19:32:16 5 hitting on a fair amount, then maybe you need to go
19:32:19 6 further. And if you're not hitting on anything, that is
19:32:22 7 of interest, maybe you say, okay, well, in the grand
19:32:28 8 scheme of things, we can live with that. Is there any
19:32:32 9 merit to that approach?

19:32:35 10 MR. GROSS: I do have a thought on it, your
19:32:37 11 Honor. I mean, first, to be candid, having done random
19:32:40 12 sampling in discovery when it's merited in other cases,
19:32:45 13 this doesn't strike me as the type of facts that lends
19:32:49 14 itself well to anything statistically meaningful
19:32:52 15 analysis. But, but, I do think the parties, in their
19:32:56 16 work together up through this stage, have done something
19:32:59 17 equivalent, which is run across enormous repositories,
19:33:04 18 thousands of search terms to see where they hit and
19:33:09 19 produce the responsive results. And the searches get
19:33:14 20 run through large repositories. And so Moog provided
19:33:18 21 search terms, and you know we had issues with some of
19:33:19 22 them, and the parties worked together with search terms
19:33:25 23 and provided responsive documents. So it's not as
19:33:27 24 though Moog has no insight into what is in the company
19:33:33 25 when you sort of use a shotgun approach to fine things

1 MOOG, INC VS. SKYRYSE, INC, ET AL

19:33:34 2 relative to the lawsuit. We've done that. This is on
19:33:36 3 top of that, what they are demanding. And, keep in mind
19:33:40 4 what they are demanding it for. They say they need it
19:33:43 5 to identify their own trade secrets. That is the only
19:33:45 6 issue before the Court right now in this motion. They
19:33:50 7 have enough information, I don't think random sampling.

19:33:53 8 MAGISTRATE JUDGE MCCARTHY: To identify,
19:33:54 9 they know what their trade secrets are in the abstract,
19:33:57 10 but the issue in this case is which trade secrets may
19:34:03 11 have been misappropriated by the Defendants, and,
19:34:05 12 therefore, will be at issue for the preliminary
19:34:10 13 injunction motion.

19:34:13 14 MR. GROSS: Well, your Honor, I beg to
19:34:14 15 differ with that just a little bit. Because, Moog has
19:34:18 16 not shown us that they know what their trade secrets
19:34:20 17 are. And I think what they will do, if they are
19:34:23 18 permitted more indiscriminate discovery, they'll find
19:34:29 19 things that look like Moog's, or things they identify
19:34:30 20 look like Moog's and then they'll assert trade secrets
19:34:32 21 in those. They should know what their trade secrets are
19:34:35 22 now based on the steps they took to keep them trade
19:34:38 23 secrets. And this is a hindsight risk that we want to
19:34:41 24 guard against.

19:34:43 25 MAGISTRATE JUDGE MCCARTHY: I understand

1 MOOG, INC VS. SKYRYSE, INC, ET AL

19:34:44 2 your concern about that, and I addressed it, I think, in
19:34:48 3 my Decision and Order. I mean, there has to be a
19:34:52 4 certain level of trust here. I know that is
19:34:56 5 theoretically possible that they could generate a
19:34:59 6 claimed trade secrets based on what they've seen in your
19:35:02 7 documents, but you also have a record of what you
19:35:06 8 developed and how you developed it. So, yeah, I can see
19:35:10 9 both points, but I don't think that is a deal breaker.

19:35:13 10 Mr. Naqvi, were you going to say something?

19:35:18 11 MR. NAQVI: Yes, your Honor. And I
19:35:19 12 appreciate your Honor taking the practical approach
19:36:28 13 here. I would have a proposal here that I think may cut
19:36:33 14 through this issue and tries to reach a middle ground
19:36:35 15 and keeps in mind relevance and proportionality. I
19:36:40 16 think Moog would be okay with, instead of entire images
19:36:43 17 of all nine laptops being turned over, that Skyryse
19:36:48 18 turns over three laptops of our choosing, and also
19:36:50 19 provides file lists of all the laptops, that way --

19:36:53 20 MAGISTRATE JUDGE MCCARTHY: I'm sorry,
19:36:54 21 provides all of what for three of the laptops?

19:36:59 22 MR. NAQVI: Images of three laptops of our
19:37:01 23 choosing, and as well as file lists for all nine
19:37:04 24 laptops. That way we can see what the contents are, we
19:37:06 25 can still do our forensic investigation for three of the

1 MOOG, INC VS. SKYRYSE, INC, ET AL

19:37:09 2 laptops, and if we see there is a common pattern here,
19:37:12 3 then we can meet and confer. And if there is a dispute,
19:37:15 4 come back to the Court for good cause to get the other
19:37:18 5 images. But, I think at least we'll be able to do a
19:37:21 6 forensic analysis for three of the laptops, and we will
19:37:24 7 also be able to see a file listing for all of the other
19:37:26 8 laptops. And we'll determine if there are documents or
19:37:29 9 certain groups of documents that are relevant and we can
19:37:31 10 conduct our investigation that way.

19:37:33 11 MAGISTRATE JUDGE MCCARTHY: Okay. Have you
19:37:34 12 made that proposal to Skyryse previously or is that a
19:37:40 13 new idea?

19:37:41 14 MR. NAQVI: That is a new idea. I mean,
19:37:43 15 previously, Skyryse's position was they were not going
19:37:45 16 to turn over anything. We're trying to work to find a
19:37:49 17 middle ground.

19:37:49 18 MR. GROSS: Your Honor, it is an interesting
19:37:51 19 thought and it's the first we heard about it. There are
19:37:54 20 problems with it. One of which is Moog should not be
19:37:57 21 able to pick, as a laptop of its choosing, a laptop, the
19:38:01 22 only reason we're talking about which, is because Gibson
19:38:05 23 Dunn transparently explained it was connected to what we
19:38:10 24 now know is an IT USB drive. There is no basis for
19:38:26 25 discovery of a laptop that has nothing to do with Moog

1 MOOG, INC VS. SKYRYSE, INC, ET AL

19:38:27 2 or this lawsuit. And that would permit them to go on
19:38:32 3 the proverbial fishing expedition for millions of files
19:38:34 4 that they've shown no relevance of showing. Laptops of
19:38:37 5 their choosing is just not an appropriate way to proceed
19:38:40 6 without other parameters. We have to limit it to things
19:38:45 7 they made a factual showing of relevance on.

19:38:47 8 MAGISTRATE JUDGE MCCARTHY: Well, I think,
19:38:49 9 because, folks, what you got to appreciate, and I think
19:38:51 10 it's obvious to you, you know, I'm much more
19:38:54 11 comfortable, for example, dealing with motions for stay,
19:39:00 12 motions regarding privilege, things of that sort, than I
19:39:04 13 am dealing with the nuts and bolts of a
19:39:09 14 computer-generated information and what is or is not
19:39:12 15 relevant. So, you're never going to get from me a
19:39:17 16 detailed and perfectly satisfactory resolution which
19:39:24 17 makes sense to everybody. You know, and I'm being
19:39:30 18 candid in saying that, and I just got to get that out
19:39:32 19 for you. And for that matter, and he might take
19:39:35 20 offense, but I also don't think you'll get it from Judge
19:39:38 21 Vilardo. There are limits to what we can do in a case
19:39:41 22 like this. And, therefore, I think Mr. Naqvi's proposal
19:39:46 23 may not be totally acceptable or satisfactory, but I
19:39:50 24 think it's a good starting point, and I encourage the
19:39:53 25 parties to explore that further. And if it's a matter

1 MOOG, INC VS. SKYRYSE, INC, ET AL

19:39:57 2 of me choosing the three laptops, I'm happy to do that.
19:40:01 3 I've got a dart board here, so I can. But, there has
19:40:07 4 got to be a way. I guess it's an offshoot of what my
19:40:11 5 proposal regarding random sampling was. And, you know,
19:40:14 6 it may not work in this type of scenario, but in a
19:40:20 7 sense, that is random sampling, because you're looking
19:40:23 8 at three rather than nine. So, I'm -- because we got to
19:40:27 9 move onto other issues --

19:40:29 10 MR. GROSS: Sure.

19:40:29 11 MAGISTRATE JUDGE MCCARTHY: -- I'm going to
19:40:30 12 encourage the parties to explore that further.

19:40:34 13 MR. GROSS: I agree with your Honor that
19:40:36 14 it's a good start and we'll be happy to meet and confer
19:40:39 15 with Mr. Naqvi and his team. It's certainly narrower
19:40:43 16 than where we started with this motion, so we will be
19:40:44 17 happy to do it.

19:40:44 18 MAGISTRATE JUDGE MCCARTHY: And then we can
19:40:46 19 reconvene, and now it's back to me. And as I said
19:40:49 20 before, I'm going to proceed with this -- I'm going to
19:40:52 21 proceed with this as though it's staying here. You
19:40:57 22 know, if Judge Vilardo takes a different view, then he
19:41:02 23 does. But, as I said at the outset, I don't think
19:41:06 24 anything we're doing here will be a wasted effort
19:41:09 25 because whether you need it here or you need it in

1 MOOG, INC VS. SKYRYSE, INC, ET AL

19:41:15 2 California, you're going to need it. I'm happy to meet
19:41:17 3 with you again. Like I said, we've been away from each
19:41:20 4 other for two months or whatever, and I missed you.
19:41:25 5 But, you know, I can set up more frequent meetings now.
19:41:29 6 So, we'll come back to that at the end of today's
19:41:32 7 session, and we'll set a date for a further reconvening
19:41:37 8 on that issue and the other issues we're going to
19:41:43 9 discuss today. Okay? All right?

19:41:45 10 MR. GROSS: Okay.

19:41:46 11 MR. NAQVI: Okay. Of course, your Honor.
19:41:48 12 Thank you.

19:41:49 13 MAGISTRATE JUDGE MCCARTHY: Let's move onto
19:41:50 14 item two in Rena's letter, the volume shadow copies.

19:41:56 15 And who is going to speak?

19:41:58 16 MR. NAQVI: Thank you, your Honor. This is
19:42:02 17 Kasim Naqvi and I will be speaking.

19:42:02 18 This is fortunately, for the Court, a
19:42:04 19 narrower issue than that one before. And for the
19:42:08 20 Court's edification, to the extent it's helpful, let me
19:42:12 21 explain what a volume shadow copy is. Your Honor may
19:42:16 22 have that question.

19:42:16 23 A volume shadow copy is a technology
19:42:19 24 included Microsoft Windows that creates backup copies or
19:44:29 25 snapshots of computer files or volumes even when the

1 MOOG, INC VS. SKYRYSE, INC, ET AL

19:44:57 2 computer is in use. So, it can be used to access files
19:45:02 3 or volumes that were subsequently deleted, basically a
19:45:06 4 snapshot back in time.

19:45:07 5 In this case, it is undisputed that Ms. Kim,
19:45:11 6 Defendant Kim, deleted what appears to be approximately
19:45:14 7 780 Moog files from her Skyryse-issued Windows laptop.
19:45:19 8 And that has been produced to iDS as device number one.
19:45:24 9 The dispute right now is, Moog is requesting a
19:45:27 10 production of the volume shadow copy for Ms. Kim's
19:45:33 11 laptop at a certain point in time so Moog can understand
19:45:36 12 exactly what was deleted, what happened to those files,
19:45:40 13 what the contents of those files are, and so on and so
19:45:42 14 forth. Skyryse's position is that Moog has already been
19:45:45 15 provided a file listing for the 780 files and it doesn't
19:45:50 16 need to access the volume shadow filing itself.

19:45:54 17 As your Honor can appreciate, this is a
19:45:56 18 constant theme in the case that where Skyryse claims
19:45:59 19 that file listings is all we need, and access to actual
19:46:02 20 files or backups are not appropriate. But file listings
19:46:06 21 are not sufficient for the exact same reason that we've
19:46:08 22 already discussed with the trade secret identification
19:46:10 23 and now the laptop issue. We need access to the volume
19:46:14 24 shadow copy so we can inspect the files themselves and
19:46:18 25 understand their contents. The files may have been

1 MOOG, INC VS. SKYRYSE, INC, ET AL

19:46:21 2 altered, they may have been transposed, they may have
19:46:24 3 been transferred to other locations, and this is all
19:46:27 4 relevant and necessary information. And Skyryse, more
19:46:32 5 recently, not in their papers, but in a meet and confer
19:46:35 6 with us, has argued that, you know, it's more arguments
19:46:39 7 about burden and cost. But iDS, the neutral vendor, has
19:46:44 8 already processed the volume shadow copy data to prepare
19:46:47 9 the file list. So, there would be minimal additional
19:46:51 10 effort for iDS to export the entire volume shadow copy
19:46:56 11 to a logical evidence file. And, you know, they may
19:47:15 12 argue again about a privilege review. But, again, a
19:47:18 13 privilege review should not be permitted to hold up
19:47:20 14 discovery, especially where it involves deletion of 780
19:47:25 15 files, 780 Moog files, by one of the Defendants in the
19:47:29 16 case. This is not -- this is not another employee.
19:47:32 17 This is either a file deleted by Ms. Kim from her
19:47:37 18 laptop. Moog needs to have access to a snapshot of that
19:47:42 19 laptop so we can understand exactly what those files and
19:47:46 20 what was done.

19:47:46 21 MAGISTRATE JUDGE MCCARTHY: Okay. Thank
19:47:47 22 you.

19:47:47 23 Gabe, are you up or?

19:47:48 24 MR. GROSS: Yes, I'll handle this, your
19:47:51 25 Honor. So, I think Mr. Naqvi was very clear on what

MOOG, INC VS. SKYRYSE, INC, ET AL

19:47:54 2 their focus was here. It is the 780 files that were
19:47:58 3 allegedly deleted. And they want to know if there are,
19:48:01 4 I guess, remnants of them or information in them in
19:48:05 5 backup copies. That, frankly, seems like reasonable
19:48:08 6 targeted discovery to me. It's not what they are asking
19:48:12 7 for. They are asking for 10 virtual shadow copies,
19:48:16 8 which are entire backups of complete devices, and they
19:48:19 9 want to get them from three devices, not just the one
19:48:22 10 Ms. Kim used. So, it's another example of this over
19:48:26 11 reach, where rather than focusing on the thing that they
19:48:29 12 say they are alarmed about with a factual basis, they
19:48:33 13 are asking for entire backups of laptops that contain
19:48:36 14 millions of files with no showing of relevance and no
19:48:40 15 respect for the burden that would impose. This would
19:48:43 16 cover the 10 VSC, or virtual shadow copies they've asked
19:49:14 17 for, would encompass over 100 gigabytes of data and
19:49:21 18 about 8 million pages of data. And, your Honor, there
19:49:23 19 is just no showing to impose that kind of burden on them
19:49:23 20 to identify their own trade secrets. I would be happy
19:49:28 21 to meet and confer with them about a way to get
19:49:32 22 reasonable backups targeting those 780 files. That
19:49:34 23 sounds targeted and perhaps productive to move this
19:49:37 24 forward. But what they are asking for is orders of
19:49:40 25 magnitude that they have made no showing they are

1 MOOG, INC VS. SKYRYSE, INC, ET AL

19:49:43 2 entitled to.

19:49:44 3 MAGISTRATE JUDGE MCCARTHY: Okay.

19:49:46 4 MR. NAQVI: Your Honor, may I briefly
19:49:50 5 respond? Respectfully, we're trying to -- we're happy
19:49:52 6 to meet and confer. The problem is, we're trying to
19:49:56 7 move this case along, and I think your Honor is trying
19:49:56 8 to move this case along to the identification phase.
19:49:56 9 And we've met with Skyryse and they have refused to
19:50:00 10 provide any volume shadow copies. We've made these
19:50:06 11 exact arguments to them and they refuse to provide
19:50:08 12 anything.

19:50:09 13 MAGISTRATE JUDGE MCCARTHY: Well, whether
19:50:11 14 they have refused to the past or not, what Mr. Gross
19:50:13 15 said a minute ago is that they might be willing to give
19:50:16 16 you volume shadow copies of the deleted files. Is that
19:50:20 17 right?

19:50:21 18 MR. GROSS: That is where we should focus
19:50:23 19 our efforts, your Honor. A single volume shadow copy is
19:50:26 20 an entire laptop, it's millions of files. If it
19:50:30 21 contains those 780, we're happy to look for those. That
19:50:34 22 sounds appropriate. But, no, they are not entitled to a
19:51:24 23 single, much less 10 entire volume shadow copies, but
19:51:29 24 the focused 780 files, that is something we can work
19:51:34 25 with.

1 MOOG, INC VS. SKYRYSE, INC, ET AL

19:51:34 2 MAGISTRATE JUDGE MCCARTHY: Mr. Naqvi.

19:51:36 3 Because I have to say, when I was reviewing the papers,
19:51:39 4 what struck me, if she has deleted files, so you don't
19:51:43 5 know what was in them or without looking at them, then
19:51:46 6 you should be able to get the shadow copies. Beyond
19:51:51 7 that, I don't necessarily, at this point, see the need,
19:51:56 8 maybe there is a reason, but it seems to me that would
19:51:59 9 be a good starting point for your discussions if you're
19:52:03 10 going to meet and confer, and I would encourage you both
19:52:06 11 to do so, and then we can take it up again when we
19:52:10 12 reconvene. And, again, I am willing to get back with
19:52:13 13 you, both or with everybody, in two weeks or whatever
19:52:18 14 time frame you suggest. But, but, you know, again, I
19:52:24 15 don't mean to sound like a broken record, because I know
19:52:26 16 this is a concern of all of yours, which is expense
19:52:31 17 being one of them to everybody, but, also, this is a
19:52:36 18 preliminary injunction motion, and those are normally
19:52:38 19 supposed to move pretty quickly. And, you know, we're,
19:52:43 20 through nobody's fault, but we're several months down
19:52:45 21 the road, and we're nowhere close to getting a hearing
19:52:48 22 date. So, I just, if I have to cut the baby in half on
19:52:54 23 certain things and it's a less than perfect solution,
19:52:58 24 that is what I'm going to do. But I am going to
19:53:01 25 encourage you to talk with each other. And it does seem

1 MOOG, INC VS. SKYRYSE, INC, ET AL

19:53:05 2 to me that you're entitled to shadow copies of the
19:53:08 3 deleted files. If you can make a compelling argument as
19:53:11 4 to why you need shadow copies of anything else, you
19:53:15 5 know, I'll listen at our next get together. But, you
19:53:18 6 know, we got other issues we've got to confront today as
19:53:22 7 well. So, can I leave it at that for now?

19:53:27 8 MR. NAQVI: Thank you, your Honor. We're
19:53:28 9 okay with that. And I think I'll just note for the
19:53:31 10 record that we have requested other volume shadow
19:53:33 11 copies. We will defer on those issues, while reserving
19:53:36 12 our rights, but we'll meet and confer with counsel, at
19:53:39 13 least as to Ms. Kim's device.

19:53:41 14 MAGISTRATE JUDGE MCCARTHY: Okay. Good,
19:53:42 15 good, good, good.

19:53:43 16 Now we move to item three on Ms. Andoh's
19:53:48 17 letter, which relates to the Defendants Pilkington and
19:53:53 18 Kim, and their excision of documents prior to 2021. And
19:54:02 19 the theory being that is when everything happened here?
19:54:06 20 Is that -- who is going to -- let's see, Anthony Green,
19:54:13 21 who is arguing on behalf of them?

19:54:17 22 MR. GREEN: My colleague Alex Truitt will
19:54:20 23 handle this for us.

19:54:21 24 MR. TRUITT: Can you hear us?

19:54:23 25 MAGISTRATE JUDGE MCCARTHY: Yes, I can hear

1 MOOG, INC VS. SKYRYSE, INC, ET AL

19:54:25 2 you and I can see you, so it's all good.

19:54:27 3 MR. TRUITT: So, I think the first place to
19:54:29 4 start with this is that this is not a motion to seek the
19:54:33 5 discovery to further the identification of trade
19:54:36 6 secrets. This is a motion that, you know, if you look
19:54:39 7 at their motion, you get the impression that they
19:54:41 8 already know what their trade secret is, and they can
19:54:44 9 identify it. And our position is if you can identify
19:54:47 10 your trade secret, identify the trade secret, and then
19:54:49 11 come back to us and we'll discuss about how to deal with
19:54:52 12 these communications. Because what there is 700,000
19:54:57 13 communications that are on these devices going back to
19:55:00 14 1992. And there is an immense burden in reviewing them
19:55:06 15 for the reasons that we have set forth. And what we're
19:55:09 16 dealing with is a complaint. The complaint describes
19:55:13 17 alleged acts of misappropriation in the winter of 2021.
19:55:18 18 We have discovery requests that seek information going
19:55:20 19 back to January 1st, 2021. And we've provided all of
19:55:25 20 that. The Plaintiffs have every communication by the
19:55:31 21 individual Defendants during their time at Moog. What
19:55:34 22 they are looking for is private communications on their
19:55:38 23 personal devices. And just to repeat what Mr. Gross has
19:55:41 24 said, you know, the way discovery works under Federal
19:55:45 25 Rule 26 is that the Plaintiff makes a showing of why

1 MOOG, INC VS. SKYRYSE, INC, ET AL

19:55:49 2 there is probative value to this information sought, and
19:55:52 3 then the Defendant says, well, yes, no, here is the
19:55:56 4 burden of compliance. And what we're saying here is
19:55:59 5 that there is an immense number of communications that
19:56:02 6 are at issue. We've received no information from
19:56:05 7 Plaintiff about why this could have any bearing on their
19:56:08 8 claim, why this has any relationship to the alleged acts
19:56:12 9 of misappropriation which occurred in the winter of
19:56:15 10 2021, and they won't even confirm with us whether the
19:56:19 11 alleged trade secrets at issue even existed during the
19:56:21 12 time period that is at issue. So, the burden of
19:56:25 13 requiring us to then, you know, go through hundreds of
19:56:29 14 thousands of communications without any showing by the
19:56:34 15 Plaintiff it's immense, it's over the top, and it's
19:56:37 16 absurd. This is going to be months of attorney time.

19:56:40 17 MAGISTRATE JUDGE MCCARTHY: I took you out
19:56:42 18 of order, actually. I just wanted to identify you. And
19:56:45 19 then, I guess, I was going to hear from Moog first, but
19:56:49 20 then from you, but since you have spoken, that's fine.

19:56:52 21 Let me ask you a couple of questions that
19:56:54 22 might not be directly relevant to this issue, but I
19:56:58 23 think would be, might be, indirectly relevant. First of
19:57:02 24 all, are either of them, have either of them obtained
19:57:06 25 new employment?

1 MOOG, INC VS. SKYRYSE, INC, ET AL

19:57:09 2 MR. TRUITT: At this time, we have not been
19:57:12 3 informed they have obtained new employment.

19:57:15 4 MAGISTRATE JUDGE MCCARTHY: I'm sorry?

19:57:16 5 MR. TRUITT: At this time, we have not been
19:57:19 6 informed either of them have obtained new employment.

19:57:21 7 MAGISTRATE JUDGE MCCARTHY: Secondly, have
19:57:23 8 there been any developments that they are aware of in
19:57:25 9 the criminal investigation.

19:57:28 10 MR. TRUITT: At this time we've not been
19:57:30 11 given any update by the Government or anything.

19:57:32 12 MAGISTRATE JUDGE MCCARTHY: So I take it no
19:57:33 13 charges have been filed, right?

19:57:35 14 MR. TRUITT: Nothing at this time.

19:57:43 15 MAGISTRATE JUDGE MCCARTHY: All right. I
16:52:43 16 will turn to Mr. Naqvi, I guess, and then I'll hear from
16:52:46 17 you again if you need, okay? Go ahead.

16:52:48 18 MS. ANDOH: Thank you, your Honor. First,
16:52:51 19 you know, I think we consistently hear re-arguments
16:52:55 20 about the sequencing and of trade secret identifications
16:52:58 21 in this case. And your Honor already ruled on that, so
16:53:01 22 that cannot be a basis to oppose our motion. There are
16:53:04 23 two issues here. There is a procedural issue and then
16:53:07 24 there is a relevance issue. So, let me first address
16:53:10 25 the procedural issue. There is no court order,

MOOG, INC VS. SKYRYSE, INC, ET AL

16:53:12 2 stipulation or other agreement that allows what the
16:53:15 3 individual Defendants are trying to do here. The Court
17:06:21 4 entered a very detailed inspection protocol that does
17:06:25 5 not allow any excision for reasons other than for
17:06:30 6 privilege or privacy. And now we're trying to get large
17:06:33 7 scale excision based on relevance. We already litigated
17:06:37 8 this issue heavily. If I recall correctly, the
17:06:39 9 independent Defendants did not submit their own
17:06:42 10 information protocol. They did not raise this as being
17:06:44 11 an issue before, that there may be large volumes of
17:06:47 12 communication that should not be turned over. This
17:06:50 13 should have been brought up six months ago when the
17:06:53 14 inspection protocol was entered. And in compliance with
17:06:56 15 the inspection protocol, many devices have been turned
17:07:00 16 over to iDS, but, and I don't want to speak for Skyryse,
17:07:06 17 but Moog has not excised any material on the basis of
17:07:59 18 relevance because that was not permitted under the
17:08:01 19 inspection protocol. And, so, to the extent the
17:08:04 20 individuals claim that all pre 2021 communications are
17:08:09 21 private, which I think that blanket assertion is
17:08:11 22 improper on its face, it's also important to note that
17:08:14 23 the inspection protocol requires any documents excised
17:08:19 24 for privilege or privacy be specifically identified in a
17:08:24 25 log. That has not occurred here. That is a procedural

1 MOOG, INC VS. SKYRYSE, INC, ET AL

17:08:27 2 issue. None of the courts allow this practice.

17:08:30 3 Let's go to relevance. Mr. Truitt argued
17:08:33 4 that we have not made any showing, but that is just not
17:08:37 5 true. As alleged in our complaint, and as set forth in
17:08:40 6 our papers, the individual Defendants were hired in 2012
17:08:43 7 and 2013. We've already offered, we can get rid of
17:08:47 8 everything before 2013. I understand some of these
17:08:51 9 communications go back to the 1990s. We don't need
17:08:55 10 them. We have already offered that to the individual
17:08:57 11 Defendants. And specifically to the trade secrets in
17:09:01 12 this case, we explicitly alleged, they started working
17:10:07 13 some of those programs in 2013. One of the programs is
17:10:16 14 ERTOS, E-r-t-o-s. That is one of the programs that is
17:10:18 15 identified in our complaint that Mr. Pilkington actually
17:10:22 16 spearheaded that program, and that is one of the
17:10:24 17 programs that we've alleged was misappropriated. A
17:10:28 18 large volume of files for that program was
17:10:30 19 misappropriated. And so, you know, we've seen and we
17:10:34 20 have put in our papers several examples of
17:10:36 21 communications between Mr. Pilkington and Ms. Kim where
17:10:40 22 they openly discuss Moog trade secrets, where they
17:10:43 23 openly discuss disclosing Moog trade secrets to third
17:10:46 24 parties.

17:10:47 25 MAGISTRATE JUDGE MCCARTHY: Yeah, no, I've

MOOG, INC VS. SKYRYSE, INC, ET AL

seen those. But some of those when -- let me see here. I mean don't those -- the things that you cited, I think it's exhibit B to a Rena Andoh's declaration 210, although the documents are at 210-11, but, like, they are, for example, I'm not going to, because we're in a public proceeding, so I'm not going to -- there is reference to a particular text exchange on December 9th of 2021 at, I believe, 6:59 a.m. where Mr. Pilkington said certain things that he plans to do and references that program. But that is in 2021. So, why do you need -- and I agree with you in terms of what the protocol says. But, just in terms of, again, a practical resolution here, why -- that would be information that you -- well, first of all, you already have it, because you've seen it, but I can see that what happened after 2021 is certainly relevant. What they did with whatever they developed is certainly relevant. But, what they did while they were working for Moog before they left for Skyryse or before they left in general, why is that relevant? I presume you would already know that.

MS. ANDOH: Well, your Honor, we're seeking communications from their personal devices. And so to the extent they used personal devices to share Moog information between themselves for unauthorized purposes

MOOG, INC VS. SKYRYSE, INC, ET AL

17:12:40 2 or with third parties, we need to be able to investigate
17:12:44 3 that. And they had access to Moog trade secrets
17:12:47 4 beginning in 2013. And we can't provide those examples
17:12:51 5 to the Court because we don't have them. That is how
17:12:54 6 we're going to get them. And, your Honor, you brought
17:12:56 7 up a great point with practicality. What is the
17:12:59 8 practical hurdle here? There has been no claim that any
17:13:02 9 of these communications are privileged. There is a very
17:13:05 10 broad privacy concern. But from our perspective, the
17:13:10 11 privacy concern is completely eliminated by all of the
17:13:32 12 strict protections in the inspection protocol. It's not
17:13:35 13 like Moog, that the client is going to see these
17:13:38 14 materials. These communications and whatever other
17:13:40 15 documents there are, are only going to be accessible to
17:13:44 16 Moog's outside counsel and its experts. So, there has
17:13:47 17 been no claim of privilege burden. And, you know, and
17:13:51 18 any privacy concern is done with with the inspection
17:13:54 19 protocol. That is why we have a detailed protective
17:13:58 20 order and inspection protocol. Your Honor, that is why
17:14:01 21 we met and conferred with the individual Defendant
17:14:03 22 counsel, and they articulated some of the volume
17:14:06 23 concerns they had which helped narrow the scope of what
17:14:10 24 we're requesting, we removed everything prior to 2013,
17:14:13 25 and we're requesting they produce communications on

1 MOOG, INC VS. SKYRYSE, INC, ET AL

17:14:16 2 these devices after 2013 so we can determine, in their
17:14:19 3 personal capacity, to what extent they disclosed Moog
17:14:24 4 trade secrets to third parties.

17:14:25 5 MAGISTRATE JUDGE MCCARTHY: Okay. Mr.
17:14:26 6 Truitt, back to you.

17:14:28 7 MR. TRUITT: Couple of things here. You
17:14:30 8 know, first, the protective order and inspection
17:14:34 9 protocol, it required the production of devices used in
17:14:38 10 the year 2021 to the date of the complaint. So, again,
17:14:42 11 with the allegations in the complaint, and the time
17:14:44 12 frame sought in the discovery requests, it's all saying
17:14:49 13 2021 is the relevant period. And our position is that
17:14:53 14 communications on their personal devices that have no
17:14:58 15 relationship to the complaint or anything that has been
17:15:02 16 alleged are necessarily private and properly withheld
17:15:06 17 under the precise terms of the inspection protocol at
17:15:10 18 issue. So, I would just say that, you know, we disagree
17:15:14 19 with Mr. Naqvi's representation of what our rights are
17:15:17 20 under that, and that we have properly objected on the
17:15:20 21 grounds of privacy, which is permitted under the
17:15:24 22 inspection protocol.

17:15:25 23 The next thing is that, what we're dealing
17:15:31 24 with here is still a situation where there is going to
17:15:35 25 be immense burden, and all we've received from the

MOOG, INC VS. SKYRYSE, INC, ET AL

Plaintiff is simply speculation, which, again, is nowhere in the complaint, it's speculation that such-and-such is happening, and that, you know, the individual Defendants are doing this vague evil. And what we're asking for is not that these files be permanently excised, but that we get some sort of identification of the trade secret, and we get some sort of communication from Mr. Naqvi's client about what might be relevant in these massive files. And even from the period that Mr. Naqvi has truncated his claim to, it's still hundreds of thousands of communications. And once they do that, we will then go and, you know, continue to meet and confer to figure out if there is a way to reduce the burden, okay? But, right now it is just all burden on the individual Defendants. And what we haven't heard from Mr. Naqvi is why these pre-2021 communications are relevant to their identification of the trade secrets at issue. What you see in the motion papers is that the Plaintiff has a great idea of what the trade secrets at issue are, but they won't identify it. Our position is, identify them, let's get this show on the road. And until you do so, there is no reason to have this unilaterally and obscene burden placed on the individual Defendants.

1 MOOG, INC VS. SKYRYSE, INC, ET AL

17:17:09 2 MR. NAQVI: Your Honor, if I may briefly
17:17:11 3 reply?

17:17:11 4 MAGISTRATE JUDGE MCCARTHY: Go ahead.

17:17:12 5 MR. NAQVI: Again, for now probably the
17:17:14 6 third or fourth time, we're hearing a reargument of the
17:17:17 7 sequencing of discovery. Mr. Truitt wants Moog to
17:17:21 8 identify it's trade secrets before they provide
17:17:24 9 discovery. We've already dealt with that issue. So,
17:17:27 10 again, let's be very clear about that.

17:17:29 11 And, your Honor, I want to direct your Honor
17:17:31 12 to the complaint where we do implicate the time period
17:17:34 13 of 2013 to present. We specifically alleged in
17:17:37 14 paragraphs 13 and 48 that Ms. Kim and Mr. Pilkington
17:17:41 15 were hired in 2012 and 2013. We allege in paragraph 53
17:17:47 16 that Pilkington and his team built ERTOS beginning in
17:17:52 17 2013. We alleged paragraph 117, that ERTOS is one of
17:17:57 18 the programs from which large volume of files were
17:18:01 19 completely misappropriated. And, your Honor, I think
17:18:02 20 it's very important to make very clear, that the
17:18:06 21 individual Defendants stipulated to a court order to
17:18:09 22 turn over these devices wholesale. And that stipulation
17:18:09 23 did not contain any limitation. And the inspection
17:18:17 24 protocol, which is somewhat of an extension of the March
17:18:17 25 11th order, did not contain any limitations. If there

1 MOOG, INC VS. SKYRYSE, INC, ET AL

17:18:21 2 were concerns about what this process would entail, they
17:18:25 3 should have been dealt with long ago.

17:18:26 4 The problem we're having here id the
17:18:28 5 individual Defendants stipulated to a court order to
17:18:31 6 turn over devices wholesale. And just as Moog is
17:18:34 7 getting access to these devices, they are trying to walk
17:18:37 8 back the provisions of the stipulated order saying they
17:19:39 9 should have access to some of the materials and not
17:19:42 10 others. And, your Honor, the unfairness here, honestly,
17:19:46 11 if the parties were able to excise materials based on
17:19:49 12 relevance, Moog, and I don't want to speak on behalf of
17:19:52 13 the Skyryse, but the other parties in this case may have
17:19:55 14 elected to do so. But, of course, that creates an
17:19:59 15 extraordinary amount of time and burden on the other
17:20:02 16 parties. And way to cut through that is turn the
17:20:04 17 devices over wholesale. They agreed to the stipulated
17:20:08 18 order. The inspection protocol does not permit what
17:20:12 19 they are trying to do. We're seeking compliance with
17:20:14 20 the Court's order, that is all we are trying to do.

17:20:17 21 MR. TRUITT: Your Honor, if I may just very
17:20:19 22 briefly. Mr. Naqvi keeps saying we're claiming it's
17:20:23 23 relevance. We're not claiming relevance. We're talking
17:20:27 24 burden and the immense undue burden that his client is
17:20:32 25 trying to inflict on our client. And when you evaluate

MOOG, INC VS. SKYRYSE, INC, ET AL

burden, you have to look at relevance. Mr. Naqvi's motion is a rule 23 motion. Everything we need to know is within Rule 26. And Rule 26, and every case law that deals with this question says that the Plaintiff needs, or the party seeking disclosure needs to identify the relevance, and then it's weighed against the burden to the party who is seeking to withhold production. And so what we have here is a question of whether this information is relevant to the individual Defendants, I'm sorry, the Plaintiff's identification of the trade secrets. And the fact that Mr. Kim -- or Mr. Pilkington and Ms. Kim were employed in 2013, completely irrelevant. The fact that there was some work on the ERTOS, that existed prior to 2021, if that really is a trade secret at issue, completely irrelevant. The reason why I am saying that they need to identify the trade secrets is because that is what we are seeking discovery for right now. We are seeking discovery for the identification of trade secrets. And what Mr. Naqvi is asking for is just not it.

MS. ANDOH: Your Honor, I just want to make one very quick point.

MAGISTRATE JUDGE MCCARTHY: Yeah.

MS. ANDOH: There is no burden here. The

1 MOOG, INC VS. SKYRYSE, INC, ET AL

17:21:54 2 devices have already been turned over to iDS. They
17:21:58 3 instructed iDS to withhold portions of images to us.
17:22:02 4 This is not a case they have to go back and collect and
17:22:05 5 process. It's all there, there is no additional burden.
17:22:08 6 I just want to make that very clear.

17:22:10 7 MR. TRUITT: We have to review hundreds of
17:22:12 8 thousands --

17:22:12 9 MAGISTRATE JUDGE MCCARTHY: For what? You
17:22:14 10 have to review for personally private information

17:22:16 11 MR. TRUITT: For personal information, for
17:22:19 12 personal private information, in the event there is
17:22:20 13 attorney/client communications, they are not going to be
17:22:23 14 related to this action, but could be related to personal
17:22:26 15 matters. Again, like, this could have a seamless
17:22:29 16 receipt in here that has their credit card information.
17:22:33 17 The burden that is going to go into reviewing hundreds
17:22:36 18 of thousands of communications is immense. It's going
17:22:39 19 to take the attorneys at our firm months to complete.
17:22:42 20 And, if Mr. Naqvi wants to narrow this down and give us
17:22:46 21 search terms or give us this, that or the other thing,
17:22:50 22 that is something to consider. But the wholesale review
17:22:53 23 of hundreds of thousands of communications is an absurd
17:22:57 24 burden when Mr. Naqvi refuses to provide this
17:23:01 25 information to us.

1 MOOG, INC VS. SKYRYSE, INC, ET AL

17:23:01 2 MAGISTRATE JUDGE MCCARTHY: Okay, folks.

17:23:03 3 Look, again, we're not living in a perfect world. We're
17:23:06 4 living in a practical world. I do understand Moog's
17:23:11 5 position about what the protocol says, but I also want
17:23:17 6 to move this case forward, and both in terms of expense,
17:23:22 7 but possibly even more so in terms of time delay. I
17:23:29 8 think you need to put a -- you need to -- you've offered
17:23:33 9 to cut it off at 2013, I think you need to add a couple
17:23:37 10 more years onto that and go back to, I don't know, 2016,
17:23:42 11 something of that sort, cut it in half, and then work
17:23:46 12 with that. But --

17:23:48 13 MR. NAQVI: 2016 is okay with us, your
17:23:53 14 Honor.

17:23:53 15 MR. TRUITT: We haven't looked at the entire
17:23:55 16 amount of communications that are available in 2016, so
17:23:58 17 I don't have the information there. But I still would
17:24:00 18 like to meet and confer with Mr. Naqvi about some sort
17:24:03 19 of search parameters, search terms, if they want us to
17:24:07 20 look at --

17:24:08 21 MAGISTRATE JUDGE MCCARTHY: We'll talk about
17:24:09 22 that. If search terms can help, good, but I'm going to
17:24:13 23 say 2016. We're going to reconvene on these three
17:24:18 24 issues in a couple of weeks anyway, so talk to each
17:24:21 25 other with my mind-set as the back drop. I'm telling

1 MOOG, INC VS. SKYRYSE, INC, ET AL

17:24:24 2 you kind of where I'm leaning right now, and I haven't
17:24:28 3 definitively decided anything. But we'll leave it at
17:24:33 4 that, because we're now an hour and a half into things
17:24:36 5 and I want to turn to the other motion. Okay.

17:24:42 6 And then when we're all said and done here,
17:24:45 7 I'll give you a date and time in a couple of weeks to
17:24:48 8 come back and talk about things, okay? Is that fair
17:24:52 9 enough?

17:24:52 10 MR. NAQVI: Yes, your Honor, thank you.

17:24:54 11 MAGISTRATE JUDGE MCCARTHY: Everybody good?
17:24:55 12 All right.

17:24:55 13 Then let's turn to motion 213. And who --
17:25:03 14 and, you know, I have reviewed the motion papers, folks,
17:25:07 15 so, you can jump in as you see fit.

17:25:16 16 MS. YIP: Moog is happy to go first, your
17:25:18 17 Honor, if you don't have a preference.

17:25:20 18 MAGISTRATE JUDGE MCCARTHY: It's your
17:25:20 19 motion.

17:25:22 20 MS. YIP: Well, yeah, so, Skyryse filed this
17:25:25 21 additional motion to enter their source code protocol,
17:25:29 22 but it is really just an extension of the issues we
17:25:32 23 previously discussed and an extension of Moog's motion
17:26:56 24 to compel their production of source code. So, I'm
17:26:59 25 happy to go first and address the issue.

1 MOOG, INC VS. SKYRYSE, INC, ET AL

17:27:01 2 MAGISTRATE JUDGE MCCARTHY: Okay.

17:27:02 3 MS. YIP: I think that it's important here
17:27:04 4 to just step back for a moment and look at this issue in
17:27:09 5 the big picture. There is just no reason whatsoever to
17:27:14 6 add a new inspection protocol to this case. The
17:27:17 7 inspection protocol has been discussed at length during
17:27:21 8 this hearing already. It's been doing a fine job. The
17:27:24 9 Court's inspection protocol has been demonstrably
17:27:28 10 effective for over five months. Both parties have been
17:27:31 11 inspecting source code pursuant to the Court's
17:27:33 12 inspection protocol, including Skyryse's source code.

17:27:37 13 MAGISTRATE JUDGE MCCARTHY: And, Ms. Yip,
17:27:39 14 let me interject for a minute, I do apologize. I see
17:27:42 15 that 213 is Skyryse's motion, so, but you're already
17:27:47 16 into it, so go ahead.

17:27:49 17 MS. YIP: Okay. So, both parties have been
17:27:53 18 inspecting source code pursuant to the Court's
17:29:03 19 inspection protocol, including Skyryse's source code,
17:29:05 20 and both parties have produced source code pursuant to
17:29:09 21 the Court's inspection protocol. And the Court's
17:29:12 22 inspection protocol has already proven effective at
17:29:14 23 uncovering use of Moog's source code, including verbatim
17:29:21 24 copying. Moreover, the Court's inspection protocol is
17:29:23 25 extremely secure. That is one of the issues that

MOOG, INC VS. SKYRYSE, INC, ET AL

Skyryse has been raising throughout the briefing. But, when the Court entered the inspection protocol in the first place, the Court expressly determined that it was secure. And there is no reason to question that now. Our expert, Bruce Pixley, who has been conducting an inspection pursuant to the Court's protocol for over five months stated, under oath, in a declaration submitted to this Court, "In my decades of experience in working with Defendants, Plaintiffs, and as a third-party neutral, this is the most comprehensive protocol I have seen established for both parties to be able to conduct a thorough review of all data in a secure and controlled environment. Mr. Pixley also testified, there is no way for any reviewer to transmit source code or any other sensitive data out of the inspection environment.

Skyryse has never submitted any rebuttal testimony to any of this. To this day, Skyryse has not articulated any reason why this particular subset of the source code merits special treatment or justifies adding a whole new layer of complexity and cost to this case. The parties have spent over five months working within the Court's inspection protocol, expending time and resources to get everything set up and running smoothly

1 MOOG, INC VS. SKYRYSE, INC, ET AL

17:30:49 2 with a neutral vendor, getting everybody set up with
17:30:53 3 inspection laptops and so forth, and it's working. To
17:30:56 4 add a second protocol at this point is just completely
17:31:00 5 gratuitous. This court is empowered to tailor the
17:31:04 6 protocol to the needs of this case, which is truly an
17:31:10 7 extraordinary case, and the Court has already done so in
17:31:13 8 the form of the inspection protocol.

17:31:14 9 MAGISTRATE JUDGE MCCARTHY: Let me just
17:31:15 10 interrupt for a second. I know they'll raise this, they
17:31:18 11 have. What about the argument that the protocol, which
17:31:21 12 I approved, dealt with or, by its terms, dealt with a
17:31:29 13 mixture of Moog and Skyryse source code, and what you're
17:31:38 14 talking about now is only Skyryse's source code?

17:31:44 15 MS. YIP: So, to be clear, the inspection
17:31:46 16 protocol is not limited to a mix of information between
17:31:51 17 Moog and Skyryse. And we can see that from the data
17:31:54 18 that has already been turned over. The Moog data that
17:31:57 19 was turned over, we turned over our source code, it's
17:32:00 20 not a mix of from our own laptops, right. It's our
17:32:04 21 stuff and we turned it over. I think what your Honor
17:32:07 22 might be thinking about is Skyryse's argument that the
17:32:11 23 TRO prohibits this, which is just, which is incorrect.
17:32:16 24 The TRO does not prohibit Skyryse from producing its own
17:32:23 25 source code to iDS. And, in fact, Skyryse already has,

MOOG, INC VS. SKYRYSE, INC, ET AL

17:32:27 2 by its own admission. The TRO only prohibits Skyryse
17:32:34 3 from producing information to iDS if the information is
17:33:02 4 entirely Moog's, which makes sense, because that should
17:33:05 5 just be returned to us directly. It's all ours. The
17:33:08 6 TRO says nothing about whether Skyryse can make its own
17:33:13 7 source code available for inspection through iDS. If
17:33:16 8 you look at the inspection protocol, what it governs is
17:33:19 9 information that is turned over to iDS. It doesn't say
17:33:23 10 that information turned over to iDS must be X, Y or Z.
17:33:26 11 It's what the parties turn over to iDS. And here, it
17:33:29 12 makes perfect sense to have all of the source code
17:33:32 13 turned over to IDS, because iDS is secure for all of the
17:33:37 14 reasons I discussed earlier. And the parties already
17:33:40 15 turned over source code to iDS. What Skyryse is
17:33:44 16 withholding, of course, we don't know what the volume,
17:33:47 17 we haven't seen it, but my presumption is relative to
17:33:52 18 everything already turned over, Mr. Gross discussed at
17:33:54 19 length, the volume of data that has been already turned
17:33:57 20 over to iDS, what they are withholding now is likely a
17:34:01 21 relatively small subset of the information at issue
17:34:06 22 here. There is no reason to have this small subset of
17:34:10 23 information cause the implementation of a brand new
17:34:15 24 inspection protocol that governs (inaudible.) There is
17:34:21 25 already an inspection protocol in place, that is robust,

1 MOOG, INC VS. SKYRYSE, INC, ET AL

17:34:24 2 and the parties have been using and makes sense to use
17:34:27 3 here.

17:34:27 4 MAGISTRATE JUDGE MCCARTHY: Before I hear
17:34:28 5 from Skyryse, and apologies to Skyryse, it was your
17:38:08 6 motion and I preempted you, sorry about that.

17:38:10 7 But, Ms. Yip, do I understand that Moog's,
17:38:19 8 one of their primary thrusts in arguing for the -- that
17:38:25 9 you need to have computerized side-by-side analysis; is
17:38:32 10 that one of your concerns.

17:38:35 11 MS. YIP: Yes, that is.

17:38:37 12 MAGISTRATE JUDGE MCCARTHY: They are saying
17:38:38 13 you can bring in your paper copies and you can have up
17:38:42 14 to 100 pages or something. And your argument is that
17:38:45 15 that is just not practical in a case like this.

17:38:49 16 MS. YIP: Correct, right, right, right. So
17:38:51 17 for Moog's expert to bring in paper copies of our own
17:38:55 18 source code, which is voluminous, into a separate
17:38:58 19 inspection, physical inspection room, doesn't make sense
17:39:01 20 and doesn't reflect the realities of this case. So,
17:39:05 21 under such an arrangement, as you noted, your Honor, the
17:39:09 22 parties, with respect to source code, would not be on
17:39:14 23 the same computer. And because it's not on the same
17:40:03 24 computer our expert cannot use the software tools that
17:40:05 25 he needs to search for and compare different files.

1 MOOG, INC VS. SKYRYSE, INC, ET AL

17:40:08 2 Instead, he would have to literally look at a page of
17:40:12 3 his, Moog's source code, and then manually sift through
17:40:15 4 hundreds or thousands of pages of Skyryse's code to find
17:40:20 5 the corresponding page. And if he can't find the
17:40:23 6 corresponding page using this manual visual method after
17:40:27 7 maybe dozens or hundreds of hours, he would have to
17:40:30 8 manually and visually compare the pages to see what
17:40:33 9 similarities are, which makes no sense when over 40,000
17:40:39 10 files of Moog's source code were taken by Skyryse and
17:40:42 11 can potentially be found in Skyryse's code. And in
17:40:45 12 addition to all of that, because the process would be
17:40:48 13 manual, it would not only be slow, but can cause a lot
17:40:53 14 of delay, not only slow and can cause a lot of delay
17:40:56 15 but, there could be error as well. By contrast, under
17:41:01 16 the Court's protocol, both parties is on the same
17:41:05 17 computer hosted by the same third party, and our expert
17:41:09 18 can use software for the analysis and comparison.
17:41:12 19 Skyryse new protocol, it cannot.

17:41:18 20 MAGISTRATE JUDGE MCCARTHY: Under the
17:41:18 21 current protocol, they can be observed what's going on
17:41:23 22 at any point to make sure no dastardly deeds are
17:41:29 23 occurring.

17:41:30 24 MS. YIP: Absolutely, it's video recorded
17:41:32 25 and iDS has a person present at all times.

1 MOOG, INC VS. SKYRYSE, INC, ET AL

17:41:35 2 MAGISTRATE JUDGE MCCARTHY: Who is going to
17:41:36 3 argue for Skyryse?

17:41:41 4 MR. GROSS: You get to hear my voice again,
17:42:36 5 your Honor. That is Gabe Gross for Skyryse. I'll be
17:42:37 6 arguing for Skyryse, thank you.

17:42:38 7 MAGISTRATE JUDGE MCCARTHY: Okay.

17:42:39 8 MR. GROSS: I would like to address what Ms.
17:42:41 9 Yip covered, and I think most of that is actually in the
17:42:44 10 briefing in front of your Honor and touches on what we
17:42:46 11 discussed last time we had a hearing on this issue.
17:42:48 12 After I respond to that, I would like to be brief, I
17:42:51 13 would like to address a new issue that came up since the
17:42:55 14 initial briefing and supplemental briefing went in.

17:42:58 15 So, first of all, Ms. Yip represented that
17:43:03 16 Skyryse has already turned over source code under the
17:43:06 17 iDS protocol. And part of her argument that I think was
17:43:11 18 intended to convey that things are going swimmingly
17:43:14 19 under the iDS protocol. It's true that some source code
17:43:17 20 has been part of what Skyryse has provided under the iDS
17:43:21 21 protocol because the stipulation and order in this case
17:43:27 22 required Skyryse to turn over to iDS anything that could
17:43:31 23 arguably contain Moog information. And we ran those
17:43:34 24 search term hits that I told you about and found stuff
17:43:38 25 that could be mixed. So, there is some source code on

MOOG, INC VS. SKYRYSE, INC, ET AL

17:43:40 2 the iDS protocol. And, as Moog has made very clear,
17:43:44 3 they think that has been very fruitful for them, and
17:43:47 4 they've had significant and extensive access to it,
17:43:50 5 which they think they've been benefited by. So they are
17:43:54 6 getting mileage out of the iDS protocol. But I want to
17:43:58 7 be absolutely clear, while Ms. Yip said the TRO, the
17:44:01 8 stipulated restraining order in this case, doesn't
17:44:05 9 prohibit Skyryse from turning over its own code or
17:44:08 10 either side from turning over its own code to iDS, when
17:44:12 11 there is no reason to think it has mixed information of
17:44:15 12 both sides in it, it doesn't require it. And so the
17:44:19 13 whole purpose of the iDS protocol is to deal with
17:44:24 14 information that might contain both sides' sensitive
17:45:22 15 data by entrusting it with a trusted third party. You
17:45:23 16 see that, for example, in paragraph two of docket No.
17:45:27 17 25, which is the stipulation and order about producing
17:45:31 18 information data and preserving data and running
17:45:36 19 forensic searches. What that stipulation says is, this
17:45:40 20 sort of non-public information has been integrated,
17:45:44 21 combined, inserted, modified, updated, upgraded or
17:45:49 22 otherwise used by a Defendant in a matter that
17:45:52 23 necessarily includes the property -- I'm sorry, your
17:45:57 24 Honor, I think I bungled the quote. Let me paraphrase
17:46:00 25 instead of trying to quote it right.

1 MOOG, INC VS. SKYRYSE, INC, ET AL

17:46:02 2 MAGISTRATE JUDGE MCCARTHY: I've got it on
17:46:03 3 my screen right now. You're talking about paragraph
17:46:06 4 two, right?

17:46:09 5 MR. GROSS: That's right. And the idea
17:46:11 6 behind it, and this is repeated through the TRO, if
17:46:14 7 there is information that necessarily integrates one
17:47:37 8 party's information with the other, it can go to this
17:47:40 9 neutral vendor, which I don't think had been selected at
17:47:43 10 the time that was entered. But the parties put that
17:49:02 11 vendor in place. We have the neutral third party there
17:49:05 12 to deal with mixed information. And then the protective
17:49:09 13 order addresses source code and says, the parties will
17:49:12 14 negotiate another stipulation.

17:49:14 15 So, Ms. Yip said there is no reason for the
17:49:17 16 court to order, a second source code order. It isn't a
17:49:21 17 second source code order. We need to negotiate a source
17:49:25 18 code order to govern the discovery of source code in
17:49:48 19 this case. And the one that we have proposed and we've
17:49:51 20 included with our motion is one that is very similar to
17:49:54 21 those used by courts around the country. You've seen in
17:49:58 22 the letter briefing, we cited, I understand Mr. Pixley
17:50:00 23 has his opinion on that, but I don't think his
17:50:42 24 experience, you know, holds a candle to that of this
17:50:46 25 Court, of the District Court in Delaware, of the Central

MOOG, INC VS. SKYRYSE, INC, ET AL

District of California, the district courts in Texas and the district courts in North Carolina and Pennsylvania that they do it differently than Mr. Pixley is proposing to do it. So, your Honor, this would not be gratuitous or it would not be duplicative. It would be the first order of its kind in this case designed to deal with what, frankly, is routine discovery of source code in intellectual property cases.

Your Honor, Ms. Yip, also said that Skyryse was withholding source code. I just have to take issue with that because it's wrong. One, we have produced a number of the source code that falls in the potentially mixed category that she was talking about; but, two, more than three months ago, Skyryse offered up its own proprietary source code that has no reason to believe contains any Moog source code, more than three months ago. You want to know how urgent this is to Plaintiff, ask them if they actually took us up on the inspection. They refused. We said, look, just agree to our security restrictions provisionally, you're not waiving your right have this fight we're having right now. But if you want to look at them, go ahead and take a look at them and just agree to the security provisions. They don't want to look at them on a stand alone secure

1 MOOG, INC VS. SKYRYSE, INC, ET AL

17:53:38 2 computer unless they get the ability to do side by side
17:53:41 3 comparisons on their own. And this, I appreciate how
17:53:44 4 transparent Moog has been, they said in the briefs and
17:53:46 5 said to you today that we want the ability on a single
17:53:49 6 machine to take our own Moog code base and run other
17:53:53 7 comparisons to the Skyrise code base before we even
17:53:56 8 identify our trade secrets. And, your Honor, you've
17:53:59 9 heard me express my concerns over a number of hearings,
17:54:04 10 the creation of hindsight creation of trade secrets, but
17:54:09 11 I think this is telling, and it would be a mistake to
17:54:11 12 permit this type of discovery so that the Plaintiff can
17:54:15 13 run these automated side-by-side comparisons, and have
17:54:18 14 the benefits of where the overlap is before they've even
17:54:22 15 gone through the burden or gone through the task of
17:54:24 16 identifying their own trade secrets. It highly
17:54:29 17 incentivizes a Plaintiff to do what Judge (inadible) has
17:54:32 18 described, and this is the *Khatabi* case we cited, about
17:54:36 19 using discovery to redefine the trade secrets to
17:54:39 20 coincide with the Defendant's.

17:54:42 21 MAGISTRATE JUDGE MCCARTHY: Mr. Gross, I
17:54:44 22 understand that concern, and I addressed it in my July
17:54:48 23 Decision and Order, and, believe me, I'm sensitive to
17:54:53 24 it. But, on the other hand, if I understand your
17:54:57 25 proposed protocol correctly, you would be willing to

1 MOOG, INC VS. SKYRYSE, INC, ET AL

17:55:01 2 allow them to make that comparison, but they've got to
17:55:04 3 do it by bringing in paper copies and then looking at
17:55:08 4 your source code on the computer. It would just be much
17:55:12 5 more difficult for them to do that. But, you are
17:55:15 6 willing to allow them to make that comparison. Isn't
17:55:18 7 that right or --

17:55:19 8 MR. GROSS: Well, your Honor, we're willing
17:55:21 9 to give them a fair inspection of the source code. If
17:55:24 10 that is the way they want to proceed with it, we won't
17:55:26 11 stop them from doing that. But they can come and
17:55:29 12 inspect it, which they've refused to do.

17:55:32 13 MAGISTRATE JUDGE MCCARTHY: But we're
17:55:34 14 talking about huge volumes. I don't know if in
17:55:37 15 terabytes or what, we're talking about huge volumes of
17:55:40 16 information, correct?

17:55:41 17 MR. GROSS: I agree, your Honor. There
17:55:42 18 could be potentially many, many lines of code, and its
17:55:46 19 incumbent on the Plaintiff to know what in there is its
17:55:49 20 own trade secret, not to go and find comparisons and
17:55:52 21 look the comparisons. I don't mean to harp on the
17:55:55 22 issue, your Honor because, I know your inclination on
17:55:57 23 this and I respect the ruling you've already made about
17:56:00 24 about the sequence of discovery, but in the context of
17:56:03 25 comparing source code, I think it's important to discuss

1 MOOG, INC VS. SKYRYSE, INC, ET AL

17:56:07 2 this a little further because source code is written in
17:56:11 3 computer languages that have certain conventions by
17:56:14 4 software engineers who do some things the same way.
17:56:18 5 There will be similarities. There is no doubt there
17:56:21 6 will be similarities between any two code bases written
17:56:25 7 in similar languages. So, those similarities are going
17:56:28 8 to be there. And it's not appropriate for a Plaintiff
17:56:31 9 to identify its own trade secrets by looking for those
17:56:35 10 similarities.

17:56:36 11 MAGISTRATE JUDGE MCCARTHY: But, all right.
17:56:38 12 I mean, I presume, you know, that Moog is as familiar
17:56:43 13 with those concerns as you are, and they are not going
17:56:49 14 to try and make it -- I wouldn't think it would be very
17:56:52 15 productive to make an argument that a comparison,
17:56:57 16 unlike, you know, a 40,000 foot level is their trade
17:57:02 17 secret. It would have to be very significantly similar.
17:57:06 18 And so, you know, your concern, if I understand, I do
17:57:13 19 understand that, is I think you don't want them
17:57:18 20 creating, because I'm not requiring them to identify
17:57:20 21 their trade secrets right now, you don't want them
17:57:24 22 creating claims of miss appropriated trade secrets based
17:57:28 23 on what they see in your source code for the first time.
17:57:31 24 Is that right?

17:57:32 25 MR. GROSS: That is a concern, your Honor.

1 MOOG, INC VS. SKYRYSE, INC, ET AL

17:57:34 2 MAGISTRATE JUDGE MCCARTHY: And, you know, I
17:57:36 3 understand, and I respect that concern. But, on the
17:57:39 4 other hand, just because of the volume of information
17:57:44 5 that we're dealing with in or the need to get through
17:57:48 6 it, it seems to me there ought to be some type of
17:57:55 7 computerized comparison allowed, otherwise it's going to
17:57:58 8 take forever.

17:57:59 9 MR. GROSS: Well, ours does facilitate.
17:58:01 10 Your Honor, this idea that it's a manual comparison,
17:58:04 11 it's a little bit of a misnomer. The computers we've
17:58:07 12 provided on which the source code has been available is
17:58:12 13 a fully functioning computer, it's not connected to the
17:58:15 14 internet, and there are some restrictions on it. But
17:58:17 15 they are allowed, and Mr. Banks may jump in here if I
17:58:21 16 get any of this wrong, they are allowed to meet and
17:58:24 17 confer with us about the software tools to put on that
17:58:28 18 computer that will facilitate an electronic review of
17:58:31 19 the source code. It's not as though it is on paper and
17:58:35 20 they are literally are manually flipping through it.
17:58:37 21 They will have the ability to run electron searches, to
17:58:40 22 look for key words and put in significant amounts of
17:58:43 23 search terms and permutations of them to see if it's in
17:58:46 24 there. And, but, your Honor, I think this source code
17:58:49 25 dispute spans two particular discovery issues. One is,

MOOG, INC VS. SKYRYSE, INC, ET AL

17:58:54 2 what's necessary for them to discover yet to identify
17:58:57 3 their own trade secrets. Under the stipulated TRO, they
17:59:02 4 already have in the iDS protocol any source code that
17:59:06 5 Skyryse concluded even arguably might contain
17:59:09 6 information that could have come from both parties. So
17:59:12 7 do they need this additional source code protocol to
17:59:17 8 investigate Skyryse's source code that is not in that
17:59:20 9 category, but is just Skyryse's proprietary source code?
17:59:24 10 No. They have what they need through the iDS protocol
17:59:28 11 already. But this protocol that Skyryse now has moved
17:59:31 12 for and proposed will govern, and this is the second
17:59:33 13 part of the point, will govern discovery going forward.
17:59:36 14 And it protects both sides. Both sides would benefit,
17:59:40 15 both sides would have the security of their own source
17:59:43 16 code being kept in the custody of their own lawyers and
17:59:47 17 made available to the other side to review. Now, your
17:59:50 18 Honor, I wanted to close with the point I mentioned
17:59:52 19 earlier about a new -- a new item that has come up since
17:59:56 20 the briefing went in, and I think it just underscores
18:00:00 21 why the iDS protocol, which we know was drafted for the
18:00:05 22 point of dealing with mixed information, which isn't
18:00:06 23 appropriate for the other side's source code, where it's
18:00:10 24 one side or the other own propriety information. In
18:00:13 25 recent days and weeks, as we're working on discovery

MOOG, INC VS. SKYRYSE, INC, ET AL

18:00:17 2 with our colleagues Shepphard Mullin, they made requests
18:00:21 3 for the production by Skyryse of certain information
18:00:24 4 that they requested through the iDS platform, and we
18:00:28 5 have responded to those as they have come in. Recently
18:00:31 6 Moog has taken the position that Skyryse is not only
18:00:35 7 required to produce documents on request as images with
18:00:41 8 Bates number and appropriate confidentiality labels as
18:00:44 9 they requested before, but they now have taken the iDS
18:00:49 10 protocol that they say they want to apply to source
18:00:53 11 code, they are taking a position that the iDS protocol
18:00:58 12 requires Skyryse to produce, at their request, native
18:01:02 13 files that they reviewed through the iDS protocol. If
18:01:07 14 that were to apply to source code, then it would force
18:01:11 15 Skyryse to take its most proprietary sensitive source
18:01:17 16 code, and on Moog's request, turn it over to in their
18:01:49 17 native format to Moog's counsel. That would defeat the
18:01:53 18 purpose of any security restrictions in the protocols.
18:01:56 19 I don't mean to be implying any sort of nefarious intent
18:02:00 20 on Moog or its counsel, but it just demonstrates why
18:02:04 21 it's not the right vehicle. The iDS protocol is not the
18:02:07 22 right vehicle for source code discovery. And when, we
18:02:11 23 will get through our disputes of whether it requires
18:02:14 24 even native format productions, if we disagree with, but
18:08:03 25 that the position Moog has taken, and I think we need to

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:08:07 2 keep that in mind. And I think it's the wrong order to
18:08:10 3 deal with discovery source code, which many courts have
18:08:13 4 done in the way Skyryse has proposed with great success
18:08:16 5 over the years.

18:08:17 6 MAGISTRATE JUDGE MCCARTHY: Well --

18:08:18 7 MS. YIP: May I respond?

18:08:19 8 MAGISTRATE JUDGE MCCARTHY: Yeah, I'll give
18:08:20 9 you a minute. But the new issue, obviously, is
18:08:26 10 something I'm not prepared to deal with today, but we
18:08:29 11 will deal with it at our next session.

18:08:31 12 Go ahead, Ms. Yip.

18:09:10 13 And before you do, let me ask a question
18:09:11 14 that has come up based on what Mr. Gross has said. Why,
18:09:15 15 I mean, if you already have under the existing protocol,
18:09:19 16 the ability to get access to anything that contains both
18:09:26 17 Moog and Skyryse source code, so that would seem to me
18:09:34 18 to be the best evidence of potential misappropriation,
18:09:37 19 why do you need access to their source code beyond that?

18:09:41 20 MS. YIP: The reason is because we just
18:09:43 21 cannot take Skyryse's word for it. Basically, Skyryse
18:09:46 22 is taking the position that we should trust them to have
18:09:50 23 turned over everything that contains our data that is
18:09:52 24 incorporated, that has incorporated our data, that was
18:09:56 25 created using our data, and we have very, very strong

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:09:59 2 reason to believe that what they have turned over is
18:10:02 3 incomplete based on what we've seen in our own data
18:10:06 4 based on what we've seen in the inspection environment.
18:10:09 5 Frankly, it's very, very hard for us to trust what
18:10:12 6 Skyryse is saying about what they have turned over. And
18:10:16 7 I think it's an understandable position for Moog to
18:10:18 8 take, given the events and the misconduct and the theft
18:10:21 9 that has brought us all here today. For Skyryse to say,
18:10:25 10 you don't need to look at our source code or whatever
18:10:28 11 the set of source code is that they've withheld because
18:10:31 12 it doesn't contain your data, we shouldn't have to rely
18:10:34 13 on that. We should be able to conduct our own
18:10:37 14 inspection to make that call for ourselves rather than
18:10:41 15 rely on a party that has indisputably taken data from
18:10:48 16 us, rely on them to be able to make an accurate
18:10:51 17 representation to us. We should be entitled to make
18:10:54 18 that call for ourselves and that is what the discovery
18:10:56 19 process is all about.

18:10:58 20 MR. GROSS: Your Honor, I'll close with the
18:11:00 21 fact that we offered it three months ago. We're not
18:11:04 22 hiding something. It is not that they don't trust us
18:11:07 23 and they don't get the discovery. We've made this
18:11:11 24 available for three months, they chose not to look at
18:11:14 25 it.

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:11:14 2 MS. YIP: May I address that?

18:11:16 3 MR. GROSS: Yes.

18:11:17 4 MS. YIP: The reason it doesn't make sense
18:11:19 5 to travel to their offices and into an inspection room
18:11:22 6 and do the inspection under their regime is we would
18:11:26 7 have a hand tied behind our back. We would have a piece
18:11:30 8 of paper or thousands of pieces of paper on one hand,
18:11:33 9 and, on the other hand, a stand-alone computer, yes, it
18:11:37 10 may have tools, but the tools are of very limited value
18:11:40 11 if we can't run them against two sets of source code at
18:11:44 12 once. Maybe a system like that might be okay if 10
18:11:48 13 source code files were taken, five files were taken from
18:11:51 14 Moog, but here we have over 40,000 source code files
18:11:56 15 that were taken, and, approximately, 1.4 million files,
18:11:59 16 as, you know, your Honor, and maybe more, we don't know.
18:12:02 17 That is what we know now. In a case like this, it
18:12:05 18 doesn't make sense for us to bring say 40,000 files,
18:12:10 19 however many pages, that corresponds to into a physical
18:12:13 20 inspection room and then be limited to be doing this
18:12:17 21 visual comparison. There is no tool that can enable you
18:12:20 22 to run a comparison between two sets of source code when
18:12:23 23 one set of source code is not even on the computer or
18:12:26 24 it's somewhere else, whether in a printed copy, printed
18:12:30 25 form or something else. And these cases that Mr. Gross

MOOG, INC VS. SKYRYSE, INC, ET AL

18:12:33 2 has been talking about that he says support his point of
18:12:37 3 view, they really don't advance the discussion here.
18:12:39 4 Those cases are completely different from this case.
18:12:42 5 Those cases did not involve a situation where an
18:12:45 6 inspection protocol was already in place for over five
18:12:48 7 months that expressly governs source code. The Court's
18:12:53 8 inspection protocol specifically says it governs source
18:12:56 9 code. And when Mr. Gross says the inspection protocol
18:12:59 10 was drafted to address only mixed code, I know that is
18:13:04 11 not true because I drafted it. I was the part of the
18:13:08 12 group of people who drafted it. And so, in conference
18:13:12 13 with the other -- with Skyryse's former counsel. So,
18:13:16 14 for him to say it was drafted with this intent, is just
18:13:20 15 false. And, in fact, Mr. Gross wasn't involved in the
18:13:22 16 drafting of that inspection protocol. He was
18:13:25 17 substituted in as counsel afterwards. And so, this
18:13:29 18 case, this is not a case like those cases that he has
18:13:32 19 been referencing. Those cases did not involve a
18:13:34 20 situation where the parties have already reviewed and
18:13:38 21 produced significant amounts of source code under such a
18:13:40 22 preexisting inspection protocol. And none of the cases
18:13:43 23 were the parties already paying for the services of a
18:13:46 24 third-party neutral vendor to host materials like source
18:14:26 25 code. Our neutral vendor iDS has been doing a fine job.

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:14:30 2 And there has not been a single security breach in the
18:14:34 3 last five months. And, again, perhaps most importantly,
18:14:37 4 none of those cases involve the scale of the theft that
18:14:39 5 we've seen here. None of them involve theft of
18:14:42 6 approximately 1.4 million files and over 40,000 source
18:14:47 7 code files. This case needs a tailored approach, and we
18:14:50 8 already have one in the inspection protocol the Court
18:14:52 9 already entered in May. There is no need to reinvent
18:14:55 10 the wheel or to add a fifth wheel. The Court's
18:14:59 11 inspection protocol is appropriate for inspecting all
18:15:02 12 source code in this case.

18:15:03 13 MAGISTRATE JUDGE MCCARTHY: All right.
18:15:04 14 Counsel. This has been helpful to me. We've been at
18:15:08 15 this two hours now. And I'm going to have to draw to a
18:15:13 16 close for today's purpose. But I want you to continue,
18:15:16 17 as you are, discussing the other issues. I want you to
18:15:21 18 continue discussions on this issue, too, bearing in mind
18:15:27 19 that, as I sit here today, my primary concerns are,
18:15:32 20 first of all, on Moog's behalf or from Moog's
18:15:37 21 standpoint, it does seem to me that, given the volume of
18:15:41 22 files or whatever and source code here, it's -- there
18:15:46 23 has to be some type of provision for side by side
18:15:51 24 comparison on a computer or comparison by computer
18:15:57 25 rather than comparing hard copy or from one computer to

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:16:03 2 the other where they can't both be looking at the same
18:16:08 3 universe. I don't know a whole lot about computers, but
18:16:11 4 it does seem to me it's just not practical to do that
18:16:16 5 type of a comparison unless you can do it by computer.
18:16:46 6 So, that leans towards Moog's position. Leaning though
18:16:50 7 towards Skyryse's position, I am concerned with the
18:16:55 8 possibility of -- I won't say I'm concerned, I recognize
18:17:01 9 their concerns about the security of their information
18:17:05 10 and preventing the possibility of just generating claims
18:17:12 11 of trade secret misappropriation based on what Moog sees
18:17:18 12 in the computerized comparison. I do think, though,
18:17:22 13 that there are provisions which can protect against
18:17:27 14 that, and certainly the Court would not be pleasantly
18:17:33 15 disposed to any type of or creation of claims that don't
18:17:41 16 have a basis in fact. And I think you're all good
18:17:44 17 attorneys, you're all honest attorneys, and I'm sure you
18:17:47 18 would do your best not to allow that to occur. I'm not
18:17:50 19 deciding this issue today. I'm just giving you what my
18:17:55 20 current concerns are. And I want you to continue
18:17:59 21 talking and then come back to me.

18:18:01 22 What do you want to do, folks, two weeks,
18:18:04 23 three weeks, you tell me.

18:18:06 24 MS. ANDOH: Your Honor, I would suggest, so,
18:18:08 25 a couple of housekeeping issues that I was planning on

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:18:10 2 raising anyway at the close of this that might impact
18:18:13 3 the timing of this.

18:18:14 4 MAGISTRATE JUDGE MCCARTHY: Okay.

18:18:15 5 MS. ANDOH: There are a couple of other
18:18:17 6 issues that have come up that -- that we think are
18:18:21 7 actually going to require your intervention that are, to
18:18:24 8 some degree, related. For example, one of them, Mr.
18:18:26 9 Gross mentioned, that what is the issue of the format of
18:18:30 10 the production because that is pretty mission critical
18:18:33 11 for us at this point. There also has been a series of
18:18:38 12 concerns that have been raised with interpretation of
18:20:38 13 your Honor's prior orders with respect to the third
18:20:40 14 party discovery relevant to our trade secret I.D.

18:20:45 15 MAGISTRATE JUDGE MCCARTHY: Relevant to
18:20:46 16 what?

18:20:47 17 MS. ANDOH: Our trade secret identification
18:20:49 18 process.

18:20:49 19 MAGISTRATE JUDGE MCCARTHY: Okay.

18:20:50 20 MS. ANDOH: So, I think those two issues
18:20:52 21 we're going to have to move on. And so what I would
18:20:54 22 suggest is that you do the next hearing -- your Honor,
18:21:00 23 the reason I'm hedging a little bit here, I'm actually
18:21:03 24 on jury trial the week of November 14th, but I also
18:21:06 25 don't want to be let this go away on this. I would

MOOG, INC VS. SKYRYSE, INC, ET AL

18:21:12 2 suggest, I would suggest probably the best move here,
18:21:17 3 your Honor, would be to have the hearing in three weeks.
18:21:20 4 I'm going to hope that if you do it on the Friday, the
18:21:22 5 18th, I'll be done with my trial by then. And if not,
18:21:25 6 I'll support my colleagues in moving forward without me.
18:21:30 7 But the reason why I think there needs to be three weeks
18:21:33 8 is because I think there needs to be time for us to file
18:21:36 9 additional motions and have them fully consider
18:21:41 10 submitted for consideration. And I think with respect
18:21:42 11 to the materials that your Honor has suggested that we
18:21:51 12 need to meet and confer with opposing counsel, we
18:21:54 13 probably should be in a position to do a joint
18:21:58 14 stipulation, not joint submission, logistically that is
18:22:05 15 really tough, but simultaneous submission to your Honor,
18:22:09 16 maybe like 72 hours ahead of the next hearing that
18:22:12 17 basically briefs your Honor on progress and identifies
18:22:15 18 issues that have been resolved, and also summarizes the
18:22:19 19 remaining outstanding issues that the parties believe
18:22:22 20 the Court needs to decide. I think one thing that is
18:22:25 21 happening, as time goes by, these issues -- these issues
18:22:29 22 have a tendency to become almost (inaudible) issues,
18:22:34 23 your Honor. And so I think it's important that when we
18:22:36 24 actually get to the Court, that your Honor has something
18:22:39 25 in writing from each of the party's understanding what

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:22:42 2 they understand the issues to be what the status of the
18:22:44 3 issue to be. And that way your Honor has a very clear
18:22:48 4 road map in which to make any decisions going forward.

18:22:50 5 MR. GROSS: Your Honor, if I could respond
18:22:52 6 to that, please.

18:22:52 7 MAGISTRATE JUDGE MCCARTHY: Yeah.

18:22:53 8 MR. GROSS: We have operated under your
18:22:57 9 instruction that all discovery, except for what Moog
18:23:01 10 says it needs to identify its trade secrets, is
18:23:04 11 sequenced for after that gets resolved. And I'm hearing
18:23:07 12 now that they want to bring in more motions. We have a
18:23:10 13 motion to compel that was filed June 30th. We have been
18:23:15 14 holding off third-party discovery. We need to test
18:23:15 15 what's going on with Moog's alleged efforts to keep its
18:23:21 16 trade secret secret, and all of that has been on hold.
18:23:23 17 So I'm concerned about this asymmetry, and if we're
18:23:27 18 going to bring more motions. And if that is the case
18:23:29 19 and there is going to be open season on discovery, then
18:23:31 20 I am sure we're going to get right to work and we'll
18:23:33 21 have motions. But I would appreciate the Court's
18:23:35 22 guidance on exactly what the next hearing is for. If it
18:23:38 23 is to follow up on issues here and is going to proceed
18:23:42 24 in order after that, no problem. If you tell us that
18:23:45 25 discovery can proceed full bore, no problem but we need

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:23:51 2 some parity here.

18:23:51 3 MS. ANDOH: Your Honor, the issues that we
18:23:52 4 plan on bringing are issues that need to be resolved for
18:23:55 5 the trade secret identification. And what you're
18:23:57 6 hearing right now is exactly what hear on the meet and
18:23:59 7 confers when we show up and say, we need this
18:24:03 8 information for our trade secret identification, and the
18:24:07 9 Defendants say, no, you don't. And this material is
18:24:08 10 stayed and you don't get it right now. And then we get
18:24:11 11 gridlocked. So, from our perspective, we are fully
18:24:16 12 aware of the fact that the only motions you need to hear
18:24:20 13 right now are ones that relate to our ability to do our
18:24:20 14 trade secret identification.

18:24:21 15 These additional issues that have arisen, in
18:24:24 16 our view, which I believe the Court is going to share
18:24:29 17 once it is fully submitted, is that they are necessary
18:24:30 18 for us to engage in our trade secret I.D. Very clearly
18:24:31 19 from the shaking of the heads of the Skyryse attorneys,
18:24:32 20 they disagree with us and they'll make that position on
18:24:35 21 paper, but we need to get guidance from your Honor in
18:24:38 22 order to proceed.

18:24:39 23 MAGISTRATE JUDGE MCCARTHY: Okay. If it
18:24:42 24 will help the parties, I will reiterate my understanding
18:24:46 25 of how we're going. And that is, we're not -- I'm

MOOG, INC VS. SKYRYSE, INC, ET AL

1
2 tabling everything except the discovery that is
3 necessary for Moog to identify its trade secrets with
4 the level of specificity that I talked about in my July
5 Decision and Order. Other issues such as discovery into
6 whether or not something identified as a trade secret
7 that has been misappropriated was in fact a trade
8 secret, such as what measures did you take, did Moog
9 take to preserve it, preserve confidentiality, et
10 cetera, et cetera, those are for down the road. So,
11 that is what I envision happening in terms of the
12 sequencing here.

13 Now, if Moog truly needs third-party
14 discovery in order to identify the trade secrets, that
15 which of its trade secrets have been misappropriated,
16 then conceptually that wouldn't bother me. I haven't
17 seen the details of anything along those lines. But, I
18 did not mean to cabin your ability to do discovery on
19 that issue only to discovery from each other. But,
20 again, it's only discovery necessary to enable Moog to
21 identify the trade secrets that it claims to have been
22 misappropriated. Because, again, folks, remember, we're
23 just dealing right now with discovery that is necessary
24 for the preliminary injunction hearing. Other discovery
25 will take place at a later date, either in this court or

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:26:33 2 in California.

18:26:35 3 MR. GROSS: Understood. Your Honor, if,
18:26:37 4 just for clarity, please.

18:26:40 5 MAGISTRATE JUDGE MCCARTHY: Yeah.

18:26:40 6 MR. GROSS: You ordered the Plaintiff on
18:26:43 7 July 27th to file its motion to compel this discovery
18:26:46 8 allegedly necessary to enable itself to identify trade
18:26:50 9 secrets. We didn't raise third party discovery issues
18:26:53 10 then. We're asking if you are giving them leave to file
18:26:57 11 another motion to compel discovery.

18:26:59 12 MAGISTRATE JUDGE MCCARTHY: They were moving
18:27:00 13 to compel discovery from you or from the individual
18:27:03 14 Defendants.

18:27:03 15 MR. GROSS: That was their choice.

18:27:05 16 MAGISTRATE JUDGE MCCARTHY: Pardon?

18:27:05 17 MR. GROSS: That was their choice.

18:27:07 18 MAGISTRATE JUDGE MCCARTHY: Yeah. But I
18:27:08 19 mean, again, folks, you are telling me that things are
18:27:11 20 coming up, which I haven't seen any detail about. So,
18:27:15 21 maybe yes, maybe no. But, I guess what I want to happen
18:27:19 22 is when we get to the point of identifying trade secrets
18:27:22 23 at issue, I don't want Moog saying, well, no, we need
18:27:28 24 more discovery to tell you more trade secrets. We have
18:27:31 25 to have kind of a drop dead date. And that is what

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:27:34 2 we're going to deal with for purposes of the preliminary
18:27:37 3 injunction motion. Down the road, if discovery leads in
18:27:40 4 other directions for the balance of remainder of the
18:27:43 5 case, then so be it. But, so that is how I see things
18:27:50 6 now. Again, you're throwing a lot at me that I have not
18:27:54 7 heard about before, and I'll deal with it at the
18:27:56 8 appropriate time. And, in terms of what the time frame
18:28:01 9 will be, I'm fine with three weeks from now. I'm not so
18:28:05 10 fine with only getting your letters two days in advance,
18:28:11 11 because that doesn't really give me enough time to, you
18:28:17 12 know, meaningfully react to things. I'm a slow study.

18:28:22 13 So, I would suggest, if you want to put it
18:28:24 14 more than three weeks, but I want your letters, I would
18:28:27 15 think, at least four days before the hearing.

18:28:36 16 MS. ANDOH: That is fine, your Honor. And
18:28:39 17 some -- I mean, the other thing we could consider doing,
18:28:42 18 your Honor, because there is a lot going on here, we
18:28:45 19 could decide to schedule two separate hearings, although
18:28:48 20 I know your Honor was sort of probably secretly happy
18:28:51 21 not to see us for the last couple of months.

18:28:53 22 MAGISTRATE JUDGE MCCARTHY: No, no,
18:28:54 23 seriously I missed you people. I was so happy to see
18:28:57 24 you all again. And I'm very disappointed that I don't
18:29:00 25 usually have my Hollywood Squares. Where is everybody

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:29:04 2 else? Tell them I'm disappointed they are not here.

18:29:07 3 MS. ANDOH: Your Honor, one thing we could

18:29:08 4 do, we could do a hearing on these issues on November

18:29:11 5 10th, and then we could set a second hearing to deal

18:29:15 6 with the new motion practice. Essentially, your Honor,

18:29:18 7 because it seems to me it took two hours to get through

18:29:21 8 this round, it might be a lot to ask that one hearing

18:29:24 9 could cover everything. Having said that, your Honor,

18:29:28 10 I'm very eager to try and put a bookend on this,

18:29:32 11 contrary to some insinuations that might have been made.

18:29:37 12 We are really trying to move this case forward

18:29:39 13 incredibly hard.

18:29:41 14 MAGISTRATE JUDGE MCCARTHY: I know you are.

18:29:42 15 Believe me, folks, your disputes, I haven't thus far, at

18:29:47 16 least, seen somebody that impresses me as really just

18:29:50 17 trying to play fast and loose. I think you're all

18:29:53 18 working in good faith. And that is what makes it hard

18:29:57 19 because it's easy if I can see somebody that is just,

18:30:01 20 you know, I can say in a minute, no, your argument is

18:30:04 21 crazy. Nobody has advanced crazy arguments to me thus

18:30:09 22 far. So, I know you're all trying your best.

18:30:13 23 But, Rena, I think I do agree that there is

18:30:17 24 a limit to what I can process at any one time. So maybe

18:30:21 25 our next meeting should be addressed to the progress

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:30:27 2 that you've made in your meet and confer on what we
18:30:30 3 discussed today. And then I'll decide what I have to
18:30:33 4 decide and then we can turn to the next issues. Does
18:30:37 5 that make sense?

18:30:41 6 MR. GREEN: Yes, your Honor. Could I make a
18:30:43 7 suggestion, though, just because, you know, I don't feel
18:30:47 8 that the motion that was directed against us actually
18:30:51 9 had to do with us identifying trade secrets. And since
18:31:14 10 we don't what other motions Moog is planning on filing,
18:31:19 11 could we table other motions being filed or at least
18:31:25 12 discuss that at the next conference as to whether you
18:31:29 13 believe that actually has to do with the identification
18:31:33 14 with trade secrets so that there is a lack of parity
18:31:39 15 that Mr. Gross mentioned, which is true.

18:31:42 16 MS. ANDOH: Your Honor, we'll make the case
18:31:43 17 in our motion that it directly relates to the trade
18:31:46 18 secret I.D. If your Honor disagrees, he'll deny or
18:32:47 19 suspend it until the trade secret I.D. is over. But
18:32:51 20 what Mr. Green is essentially suggesting is that the
18:32:54 21 Court is going to act as an gatekeeper without the full
18:32:58 22 information on what the basis for our motions actually
18:33:40 23 are. And that, your Honor, we would strongly oppose.

18:33:42 24 MAGISTRATE JUDGE MCCARTHY: All right.
18:33:43 25 Okay.

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:33:43 2 MR. GROSS: Your Honor, I'm sorry, I need
18:33:45 3 some clarification. Who has leave to file motions right
18:33:48 4 now, because the Defendants have a bunch of discovery
18:33:51 5 that bears on the PI hearing that we would like to get
18:33:56 6 going. And it sounds like the Plaintiff has the
18:33:59 7 opportunity to file motions right now.

18:34:01 8 MAGISTRATE JUDGE MCCARTHY: No, I didn't say
18:34:02 9 -- maybe I'm confused. I would like, by the time of our
18:34:07 10 -- I would like to draw the curtain on on the issues we
18:34:17 11 have been talking about today and get them decided, and
18:34:19 12 I commit to do them at our next proceeding, hopefully,
18:34:24 13 with your assistance, through your meet and confer,
18:34:27 14 having narrowed the issues even further. Let's get
18:34:30 15 these taken care of and then let's take up what comes
18:34:33 16 next. If you want to do that in two weeks rather than
18:34:37 17 three weeks, whatever, that is fine. But, again, I'm
18:34:40 18 trying to proceed in some orderly fashion here.

18:34:44 19 But, so, let's just set a date to wrap up
18:34:47 20 these issues, let's hold off on other things until we
18:34:51 21 get these issues wrapped up.

18:34:53 22 MS. ANDOH: Your Honor, if I may, I don't
18:34:55 23 think there is actually confusion here. Your Honor was
18:34:58 24 crystal clear that the only issues that were supposed to
18:35:00 25 be moved forward in discovery right now are ones related

MOOG, INC VS. SKYRYSE, INC, ET AL

18:35:30 2 to our ability to identify our trade secrets that have
18:35:34 3 been misappropriated for purposes of the preliminary
18:35:36 4 injunction. If we require further motion practice in
18:35:39 5 order to be able to obtain the information we need in
18:35:42 6 order to push that trade secret I.D. process forward,
18:35:44 7 our understanding is, based on your Honor's guidance as
18:35:48 8 well as the order, is we're permitted to make them. I
18:35:50 9 would suggest, your Honor, that we go ahead and make the
18:35:53 10 motions, because we need to be in a briefing schedule,
18:35:55 11 and then we need to have a hearing on them. And, so, if
18:35:58 12 we don't proceed with doing that, and then we have
18:36:01 13 another discussion at the next hearing in two weeks
18:36:04 14 about what the motions would be, it's going to be after
18:36:07 15 Christmas b y the time those motions are resolved. As
18:36:11 16 an Officer the Court, I'm making a representation to
18:36:13 17 your Honor, we have a good faith belief that the
18:36:15 18 outstanding issue that we have that we're going to move
18:36:18 19 on, are directly related to our ability to complete the
18:36:21 20 task that your Honor ordered us to complete in the trade
18:36:25 21 secret identification order. We will not make those
18:36:28 22 motions if that is not the case. And to the extent that
18:36:31 23 the Defendants believe they also have motions that are
18:36:33 24 relevant to those proceeding, your Honor, if they are
18:36:36 25 motions for protective order, for example, then my

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:36:41 2 request that your Honor also tell them they can do that,
18:36:43 3 too.

18:36:44 4 The foundational issue is, does it relate to
18:36:47 5 our ability to identify our trade secrets that we are
18:36:47 6 going to be asserting misappropriation on in the
18:36:47 7 preliminary injunction, and we believe that the motion
18:37:28 8 practice that we need to engage in is directly related
18:37:29 9 to that.

18:37:30 10 MAGISTRATE JUDGE MCCARTHY: Okay, folks. If
18:37:31 11 you want to make those motions, you can make those
18:37:34 12 motions. Limited to those issues.

18:37:37 13 We're going to meet in two weeks again,
18:37:40 14 right, November 10th. Is that what you suggested?
18:37:42 15 First you suggested November 18th, you're on trial the
18:37:46 16 week of --

18:37:47 17 MS. ANDOH: The 14th. The 10th is fine,
18:37:50 18 your Honor.

18:37:50 19 MAGISTRATE JUDGE MCCARTHY: All right. So
18:37:51 20 let me go back to, so if you want to make the motions in
18:37:54 21 the interim, go ahead and make them, but I won't set a
18:37:58 22 briefing schedule on them until we meet on the 10th, and
18:38:01 23 I'll set a briefing schedule. But what we're going to
18:38:04 24 talk about on the 10th is resolving the issues that
18:38:07 25 we've talked about today. Okay?

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:38:09 2 MS. ANDOH: Understood, your Honor. Yeah,
18:38:11 3 the 10th is fine. Anything up until the 14th is fine.

18:38:17 4 MAGISTRATE JUDGE MCCARTHY: Okay. When do
18:38:18 5 you start your trial?

18:38:19 6 MS. ANDOH: Monday the 14th.

18:38:22 7 MAGISTRATE JUDGE MCCARTHY: Okay. Oh, yeah,
18:38:23 8 the 11th is Veteran's Day, so, yeah, let's do the 10th,
18:38:30 9 I have something at 2 o'clock, our time. So why don't
18:38:38 10 we -- why don't we say -- let's do 3 o'clock again.
18:38:42 11 Does that work for everybody?

18:38:44 12 MR. GROSS: Skyryse can make that work, your
18:38:46 13 Honor.

18:38:46 14 MS. ANDOH: Plaintiffs can make that work.

18:38:48 15 MR. GREEN: We can make it work. I'm not
18:38:50 16 sure if I will be here, but at least Mr. Truitt will be
18:38:54 17 able to be here.

18:38:55 18 MAGISTRATE JUDGE MCCARTHY: Okay. Thank
18:38:56 19 you. And what, again, what I would like, so that I can
18:39:02 20 react to it and be able to hit the ground running on the
18:39:06 21 10th, if you can get me your letters, how about, and get
18:39:15 22 me your letters by noon on the 8th.

18:39:20 23 MS. ANDOH: Your Honor, is election day a
18:39:22 24 court holiday?

18:39:25 25 MAGISTRATE JUDGE MCCARTHY: Good question.

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:39:26 2 MS. ANDOH: I think it is.

18:39:34 3 MAGISTRATE JUDGE MCCARTHY: Yeah, we'll be
18:39:35 4 here anyway. But I don't know if it is. Is that a
18:39:39 5 problem for you then, then I can say the 7th. I don't
18:39:44 6 want to wait until the 9th. That is not realistic for
18:39:47 7 me. So, I can either say the 7th. How about the 7th at
18:39:55 8 midnight because that is the way a lot of people operate
18:39:58 9 anyway.

18:40:02 10 MR. GREEN: That is a fact, that works for
18:40:06 11 the individuals.

18:40:06 12 MAGISTRATE JUDGE MCCARTHY: I don't want the
18:40:07 13 California people to take advantage of this midnight,
18:40:17 14 that is 9 o'clock.

18:40:18 15 MR. GROSS: We understand local time, but,
18:40:45 16 your Honor, can I just have you repeat the deadline that
18:40:47 17 you just said that was for submitting what papers?

18:40:50 18 MAGISTRATE JUDGE MCCARTHY: Just an update
18:40:51 19 on what you have, what progress you've made in the
18:40:57 20 discussions as a result of today's conference. And
18:41:00 21 telling me what issues are off the table and what
18:41:02 22 issues. And, hopefully, some, at least, and what issues
18:41:07 23 remain in dispute and need to be decided by me on the
18:41:10 24 10th.

18:41:11 25 MR. GROSS: Okay.

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:41:11 2 MAGISTRATE JUDGE MCCARTHY: That is what I'm
18:41:12 3 going to do. If, in the interim, if anybody wants to
18:41:16 4 make another motion related to Moog's ability to
18:41:23 5 identify the trade secrets which it claims to have been
18:41:27 6 misappropriated, you can make those motions, but again,
18:41:33 7 I mean, Mr. Gross, you do make a good point that Moog
18:41:37 8 already did make its motions, so there may be reasons
18:41:42 9 it's got to make additional motions, but I'll just want
18:41:45 10 to take a look at those, I don't know. You can make
18:41:47 11 those motions whenever you want, but I'm not going to
18:41:51 12 set a briefing schedule on them until the 10th. So,
18:41:54 13 okay?

18:41:54 14 MS. ANDOH: Understood, your Honor. What
18:41:56 15 we'll try to do is get them on file so your Honor has
18:41:58 16 sufficient opportunity to review them prior to the
18:42:02 17 conference. And, your Honor --

18:42:03 18 MAGISTRATE JUDGE MCCARTHY: Again, I will
18:42:05 19 want to know why this is something that wasn't
18:42:08 20 encompassed in your docket No. 210 that was supposed to
18:42:14 21 be your motion.

18:42:16 22 MS. ANDOH: I appreciate the guidance.
18:42:18 23 We'll make sure to do that.

18:42:19 24 Two very minor housekeeping issues.

18:42:22 25 MAGISTRATE JUDGE MCCARTHY: Yes.

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:42:22 2 MS. ANDOH: The first is with respect to the
18:42:25 3 RRO, with respect to the individual Defendants, the
18:42:30 4 deadline passed for the RRO to be de-designated and
18:42:34 5 nobody objected to the de-designation, but I believe
18:42:42 6 it's still sealed on the docket.

18:42:51 7 MAGISTRATE JUDGE MCCARTHY: I'm sorry, is
18:42:52 8 this the privilege.

18:42:53 9 MS. ANDOH: Yes, the privileged order. I
18:42:55 10 believe it's so your Honor set a deadline for any party
18:42:58 11 to object to it becoming public and the deadline
18:43:02 12 elapsed, but it hasn't been made public. So, honesty in
18:43:06 13 advertising, it's a pure housekeeping issue, but I
18:43:09 14 believe it hasn't been unsealed yet on PACER.

18:43:12 15 MAGISTRATE JUDGE MCCARTHY: Can somebody
18:43:13 16 point me to the docket number of that or I can find it.
18:43:20 17 Yeah, it's 253, I believe. Yeah 253. I'm pulling that
18:43:27 18 up right now. Yeah, it says "filed under seal," so that
18:43:30 19 is dealing with the dismissal or transfer of venue and
18:43:34 20 the privilege issue, yeah. Yeah, I think that the
18:43:44 21 deadline has expired, so what I would do is just, I
18:43:49 22 guess, re-docket it and take out "sealed," because if I
18:43:53 23 make it public as is, it looks strange because it says
18:44:00 24 "filed under seal," and somebody might say, then why am
18:44:04 25 I looking at it. I would change page one to say

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:44:08 2 "Report, Recommendation and Order" and delete the "filed
18:44:10 3 under seal," and I'll re-docket it. Does that make
18:44:13 4 sense?

18:44:14 5 MS. ANDOH: It does, your Honor.

18:44:16 6 And the only other housekeeping issue is
18:44:18 7 with respect to the demonstratives that Mr. Gross was
18:44:21 8 showing earlier today. With respect to having those
18:44:24 9 made part of the record, I don't think we'll object to
18:44:28 10 having that. I think the only slides shown were five
18:44:30 11 through ten of his PowerPoint presentation, so we ask
18:44:35 12 that the only slides be made part of the record are five
18:44:39 13 through ten and the remaining slides not be submitted.

18:44:44 14 MR. GROSS: That is, by our count, that is
18:44:52 15 it.

18:44:53 16 MAGISTRATE JUDGE MCCARTHY: You agreed on
18:44:55 17 something.

18:44:55 18 MS. ANDOH: Miracles of miracles.

18:44:57 19 MAGISTRATE JUDGE MCCARTHY: Gabe, if you
18:44:58 20 want, at the time you file them, you can accompany them
18:45:02 21 with a little letter, and I was trying to pay attention,
18:45:05 22 but the significance as you see it. And then Moog, you
18:45:08 23 can respond if you want, okay? Just by the time --
18:45:13 24 hopefully, you're all going to be making some progress
18:45:16 25 with the guidance I've given you.

1 MOOG, INC VS. SKYRYSE, INC, ET AL

18:45:18 2 MR. GROSS: But, your Honor, would it be
18:45:20 3 helpful to you to have a little bit of a narrative
18:45:23 4 description of the description in the slides.

18:45:25 5 MAGISTRATE JUDGE MCCARTHY: Yes.

18:45:26 6 MR. GROSS: We'll be happy to put that
18:45:27 7 together.

18:45:28 8 MS. ANDOH: Your Honor, if that is going to
18:45:29 9 happen, I ask that he submit that prior to our deadline
18:45:32 10 to submit and update to your Honor.

18:45:34 11 MAGISTRATE JUDGE MCCARTHY: Yeah. I mean, I
18:45:35 12 would like to see that, I'd like that by early next
18:45:39 13 week.

18:45:39 14 MR. GROSS: It's coming soon.

18:45:41 15 MAGISTRATE JUDGE MCCARTHY: All right.
18:45:43 16 Folks, I'm leaving tomorrow to go out to South Bend to
18:45:46 17 see my Alma Mater play football, and they disappointed
18:45:51 18 me this year, but I'll be thinking of you all when I'm
18:45:56 19 out there.

18:46:06 20 MR. BANKS: I'll be bringing my daughter
18:46:08 21 back. I might see you there.

18:46:08 22 MAGISTRATE JUDGE MCCARTHY: I'll be looking
18:46:09 23 for you, Rob, we can talk about the case.

18:46:12 24 MR. GROSS: Thank you, your Honor.

18:46:13 25 MS. ANDOH: Thank you.

1 MOOG, INC VS. SKYRYSE, INC, ET AL

2 * * *

3 CERTIFICATE OF REPORTER

4
5 I certify that the foregoing is a correct transcript
6 of the record to the best of my ability of proceedings
7 transcribed from the audio in the above-entitled matter.

8
9 S/ Karen J. Clark, RPR

10 Official Court Reporter
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25